

From: Adm14Pruitt, Scott
Location: Alm Conference Room
Importance: High
Subject: Canceled: Meeting Re: Pebble Mine
Start Date/Time: Wed 3/8/2017 10:00:00 PM
End Date/Time: Wed 3/8/2017 10:45:00 PM
Pebble Briefing Req 030117.docx

POC: Ann Campbell, 202-566-1370
SCt: Denise Anderson

Conference Line: **Ex.6**

EPA Staff (Required): David Schnare (OA), Justin Schwab (OA), Layne Bangerter (OA); Mike Flynn (OA), Mike Shapiro (OW), John Goodin (OW); Kevin Minoli (OGC); Steven Neugeboren (OGC); Michelle Pirzadeh (R10); David Allnut (R10); Allyn Stern (R10)

EPA Staff (Optional): Derek Threet (OA), Ann Campbell (OA),



Meeting/Briefing Request Form for Administrator Pruitt

Today's Date: 3/1/17

Requesting Office: Office of Water

Title of the Meeting: Pebble Mine

Purpose: To discuss key aspects of the history, science, and regulatory response to the proposed Pebble mine in the Bristol Bay watershed of Alaska, along with the active litigation on this issue.

Role of the Administrator: To provide direction on the litigation.

Background: A briefing has been provided for members of the transition team. David Schnare requested we brief the Administrator

Last possible date for the meeting: March 10 (staff ready March 6th)

Is the meeting urgent and if so, why?: Yes, direction is needed ahead of the next litigation deadline, March 20.

Requested Time Length: 45 minutes

EPA Staff (Required): David Schnare (OA), Justin Schwab (OA), Layne Bangerter (OA); Mike Flynn (OA), Mike Shapiro (OW), John Goodin (OW); Kevin Minoli (OGC); Steven Neugeboren (OGC); Michelle Prizadeh (R10); David Allnut (R10); Allyn Stern (R10)

EPA Staff (Optional): Derek Threet (OA), Ann Campbell (OA),

External Participants: No

Teleconference Required?: Yes

Video Conference Required?: Yes

Point of Contact for the Meeting: Ann Campbell, 202-566-1370

NOTE: Please submit this form to Denise Anderson and copy your Special Assistant (for national program offices) or Robin Richardson (for Regions). All briefing material must be sent to your Special Assistant or Robin Richardson by 3:00 pm the afternoon before the scheduled meeting.

To: Davis, Patrick[davis.patrick@epa.gov]; Sugiyama, George[sugiyama.george@epa.gov]; Ericksen, Doug[ericksen.doug@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]; Konkus, John[konkus.john@epa.gov]
From: Greaves, Holly
Sent: Tue 3/14/2017 5:18:10 PM
Subject: RE: Letter for Don Benton

Yes, thanks Doug.

From: Davis, Patrick
Sent: Tuesday, March 14, 2017 12:57 PM
To: Sugiyama, George <sugiyama.george@epa.gov>; Ericksen, Doug <ericksen.doug@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>; Greaves, Holly <greaves.holly@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>; Kreutzer, David <kreutzer.david@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: RE: Letter for Don Benton

I will sign it gladly.

From: Sugiyama, George
Sent: Tuesday, March 14, 2017 12:38 PM
To: Ericksen, Doug <ericksen.doug@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>; Greaves, Holly <greaves.holly@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Kreutzer, David <kreutzer.david@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: Re: Letter for Don Benton

I will sign

Sent from my iPhone

On Mar 14, 2017, at 11:20 AM, Ericksen, Doug <ericksen.doug@epa.gov> wrote:

I have put together the following letter for Don Benton to President Trump. I am emailing to see if the members of the Beach Head team would sign on.

Please get back to me.

Doug

TO: President Donald J. Trump
FROM: EPA Transition Team Members
DATE: March 14, 2017
RE: Senior White House Advisor Don Benton

On January 21 ten members of the EPA transition team took the oath of Federal office and officially got to work making American great again.

Perhaps more than any other agency or department, the EPA transition team was viewed from within and on the outside as a beachhead team entering hostile territory. Media and special interest groups made the EPA transition the focus of attention.

Under the leadership of Don Benton, our team of 10 functioned as a unit. We worked to implement the President's action plan for the EPA while working with the career professionals at the Agency to keep the wheels turning.

During the first week of the transition Don Benton organized a group of people who had never met before into a team with a solid mission—serve the President and make him proud of the work we are doing.

Each member of the transition team knew that Don Benton had their back and that he would work hard to help them be successful. The success of the EPA transition team leading up to the confirmation of Administrator Pruitt was in many ways attributable to the leadership of Mr. Benton.

Don also developed a strong positive relationship with the career professionals at the EPA. It was not, and still is not, an easy arena to navigate. There are clear differences between the philosophy of President Trump and his predecessor. This differences often escalated

into tensions that Don was able to manage in a thoughtful, successful and professional fashion.

We write this letter to let you know the respect we have for the job done by Don Benton in the first month of the transition. He served our President and the EPA well as the Senior White House Advisor and continues to do so today.

Sincerely,

To: Benton, Donald[benton.donald@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]; Schnare, David[schnare.david@epa.gov]; Sugiyama, George[sugiyama.george@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Munoz, Charles
Sent: Wed 3/8/2017 6:46:45 PM
Subject: Ex.6

Personal Matters/Ex. 6

Feel free to say hi if you're looking for a reason to get some fresh air.

Sent from my iPhone

To: Woodward, Cheryl[Woodward.Cheryl@epa.gov]; Anderson, Denise[anderson.denise@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Burley, Veronica[Burley.Veronica@epa.gov]; Burton, Tamika[burton.tamika@epa.gov]; Davis, Gail[Davis.Gail@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Dickerson, Aaron[dickerson.aaron@epa.gov]; Ericksen, Doug[ericksen.doug@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]; Jenkins, Donna[Jenkins.Donna@epa.gov]; Konkus, John[konkus.john@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]; Reeder, John[Reeder.John@epa.gov]; Schnare, David[schnare.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Sugiyama, George[sugiyama.george@epa.gov]; Willis, Sharnett[Willis.Sharnett@epa.gov]; Atkinson, Emily[Atkinson.Emily@epa.gov]; Baca, Andrew[Baca.Andrew@epa.gov]; Bailey, Ethel[Bailey.Ethel@epa.gov]; Bednar, Georgia[bednar.georgia@epa.gov]; Benitez-Clark, Rowena[benitez-clark.rowena@epa.gov]; Benson, Sheila[Benson.Sheila@epa.gov]; Bergman, Shawna[Bergman.Shawna@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Blackburn, Elizabeth[Blackburn.Elizabeth@epa.gov]; Bloom, David[Bloom.David@epa.gov]; Breen, Barry[Breen.Barry@epa.gov]; Brooks, Becky[Brooks.Becky@epa.gov]; Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]; Cooper, Marian[Cooper.Marian@epa.gov]; Cyran, Carissa[Cyran.Carissa@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]; Edwards, Crystal[Edwards.Crystal@epa.gov]; Elkins, Arthur[Elkins.Arthur@epa.gov]; Fine, Steven[fine.steven@epa.gov]; Fugh, Justina[Fugh.Justina@epa.gov]; Gantt, Melissa[Gantt.Melissa@epa.gov]; Gentry, Nathan[Gentry.Nathan@epa.gov]; Grogard, Megan[Grogard.Megan@epa.gov]; Gude, Karen[Gude.Karen@epa.gov]; Hill, Randy[Hill.Randy@epa.gov]; Hill, Teresa[Hill.Teresa@epa.gov]; Hilosky, Nick[Hilosky.Nick@epa.gov]; Hitchens, Lynnnann[hitchens.lynnann@epa.gov]; Jones, Gail-R[Jones.Gail-R@epa.gov]; Jones, Tawaunna[Jones.Tawaunna@epa.gov]; Jones-Parra, Lisa[Jones-Parra.Lisa@epa.gov]; Kavlock, Robert[Kavlock.Robert@epa.gov]; Kenely, Caroline[Kenely.Caroline@epa.gov]; Lewis, Josh[Lewis.Josh@epa.gov]; Loving, Shanita[Loving.Shanita@epa.gov]; Mason, Darryl[Mason.Darryl@epa.gov]; McPherson, Mark[McPherson.Mark@epa.gov]; Milhouse, Gloria[Milhouse.Gloria@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Nishida, Jane[Nishida.Jane@epa.gov]; Osborne, Howard[Osborne.Howard@epa.gov]; Packard, Elise[Packard.Elise@epa.gov]; Patrick, Monique[Patrick.Monique@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Penman, Crystal[Penman.Crystal@epa.gov]; Plotkin, Viktoriya[Plotkin.Viktoriya@epa.gov]; Robbins, Chris[Robbins.Chris@epa.gov]; Rodan, Bruce[rodan.bruce@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Shaw, Betsy[Shaw.Betsy@epa.gov]; Sheehan, Charles[Sheehan.Charles@epa.gov]; Shiffman, Cari[Shiffman.Cari@epa.gov]; Showman, John[Showman.John@epa.gov]; Silver, Edna[Silver.Edna@epa.gov]; Simon, Nigel[Simon.Nigel@epa.gov]; Sjogren, Mya[Sjogren.Mya@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Stewart, Lakita[Stewart.Lakita@epa.gov]; Veney, Carla[Veney.Carla@epa.gov]; Vizian, Donna[Vizian.Donna@epa.gov]; Washington, Yvette[Washington.Yvette@epa.gov]; Wheeler, Kimberly[Wheeler.Kimberly@epa.gov]; Wilson, Rita[Wilson.Rita@epa.gov]; Wise, Louise[Wise.Louise@epa.gov]; Brennan, Thomas[Brennan.Thomas@epa.gov]; Brown, Caroline[Brown.Caroline@epa.gov]; Caraballo, Mario[Caraballo.Mario@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Gray, Doris[Gray.Doris@epa.gov]; Hull, George[Hull.George@epa.gov]; Kenny, Shannon[Kenny.Shannon@epa.gov]; Kime, Robin[Kime.Robin@epa.gov]; Kling, David[Kling.Dave@epa.gov]; Poole, Jacqueline[Poole.Jacqueline@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Scales, Wuanisha[Scales.Wuanisha@epa.gov]; Sowell, Sarah[Sowell.Sarah@epa.gov]; Stewart-Downer, Sherry[Stewart-Downer.Sherry@epa.gov]; Valentine, Julia[Valentine.Julia@epa.gov]; Wilkes, Quianna[Wilkes.Quianna@epa.gov]; Williams, Steven[Williams.Steven@epa.gov]; Allen, Reginald[Allen.Reginald@epa.gov]; Bachle, Laura[Bachle.Laura@epa.gov]; Benjamin-Sirmons, Denise[Benjamin-Sirmons.Denise@epa.gov]; Curtis, Mellasonda[Curtis.Mellasonda@epa.gov]; Cuscino, Glen[Cuscino.Glen@epa.gov]; Darden, Cynthia[Darden.Cynthia@epa.gov]; Dent, Bridgette[Dent.Bridgette@epa.gov]; Etzel, Ruth[Etzel.Ruth@epa.gov]; Ferris, Lena[Ferris.Lena@epa.gov]; Foos, Brenda[Foos.Brenda@epa.gov]; Gaines, Cynthia[Gaines.Cynthia@epa.gov]; Hope, Brian[Hope.Brian@epa.gov]; Lancaster,

Tina[Lancaster.Tina@epa.gov]; Lawrence, Tanya[Lawrence.Tanya@epa.gov]; Lesperance, Twanna[Lesperance.Twanna@epa.gov]; Livingston, Keith[Livingson.Kenith@epa.gov]; Newton, Jonathan[Newton.Jonathan@epa.gov]; Reed, Khesha[Reed.Khesha@epa.gov]; Rogers, JoanB[Rogers.JoanB@epa.gov]; Sanzone, Stephanie[Sanzone.Stephanie@epa.gov]; Washington, Valerie[Washington.Valerie@epa.gov]; Whickum, Cheryl[Whickum.Cheryl@epa.gov]; Zarba, Christopher[Zarba.Christopher@epa.gov]; Armstead, John A.[Armstead.John@epa.gov]; Bohan, Suzanne[bohan.suzanne@epa.gov]; Bonner, Brenda[Bonner.Brenda@epa.gov]; Cacho, Julia[Cacho.Julia@epa.gov]; Carey, Curtis[Carey.Curtis@epa.gov]; Chu, Ed[Chu.Ed@epa.gov]; Coleman, Sam[Coleman.Sam@epa.gov]; Correa, Laura[correa.laura@epa.gov]; Erikson, Linda[Erikson.Linda@epa.gov]; Flournoy, Karen[Flournoy.Karen@epa.gov]; Gaudario, Abigail[Gaudario.Abigail@epa.gov]; Ghosh, Mita[Ghosh.Mita@epa.gov]; Gray, David[gray.david@epa.gov]; Gutierrez, Claudia[Gutierrez.Claudia@epa.gov]; Gutro, Doug[Gutro.Doug@epa.gov]; Heard, Anne[Heard.Anne@epa.gov]; Hickey, Maureen[Hickey.Maureen@epa.gov]; Holsman, Marianne[Holsman.Marianne@epa.gov]; Johnson, Belinda[Johnson.Belinda@epa.gov]; Jones-Johnson, Shea[Jones-Johnson.Shea@epa.gov]; Jordan, Deborah[Jordan.Deborah@epa.gov]; Kao, Jessica[Kao.Jessica@epa.gov]; Kaplan, Robert[kaplan.robert@epa.gov]; Kelley, Jeff[kelley.jeff@epa.gov]; Kelly, Joyce[Kelly.Joyce@epa.gov]; Lapierre, Kenneth[Lapierre.Kenneth@epa.gov]; Lewis, Jacqueline[Lewis.Jacqueline@epa.gov]; Lincoln, Larry[Lincoln.Larry@epa.gov]; Lindsay, Jane[lindsay.jane@epa.gov]; Martinez, Isidra[Martinez.Isidra@epa.gov]; Mears, Mary[Mears.Mary@epa.gov]; Moraff, Kenneth[Moraff.Ken@epa.gov]; Mugdan, Walter[Mugdan.Walter@epa.gov]; Mutter, Andrew[mutter.andrew@epa.gov]; Newton, Cheryl[Newton.Cheryl@epa.gov]; Opalski, Dan[Opalski.Dan@epa.gov]; Peters, Dana[Peters.Dana@epa.gov]; Pirzadeh, Michelle[Pirzadeh.Michelle@epa.gov]; Purnell, Rhonda[Purnell.rhonda@epa.gov]; Rodrigues, Cecil[rodrigues.cecil@epa.gov]; Rowan, Anne[rowan.anne@epa.gov]; Schaaf, Eric[Schaaf.Eric@epa.gov]; Searfoss, Renee[searfoss.renee@epa.gov]; Strauss, Alexis[Strauss.Alexis@epa.gov]; Szaro, Deb[Szaro.Deb@epa.gov]; Thomas, Deb[thomas.debrah@epa.gov]; Tyler, Kendra[Tyler.Kendra@epa.gov]; Tyson, Linda[Tyson.Linda@epa.gov]; Varcoe, Betsy[Varcoe.Betsy@epa.gov]; Williams, Felicia[Williams.Felicia@epa.gov]; Williams, Odessa[Williams.Odessa@epa.gov]; Zito, Kelly[ZITO.KELLY@EPA.GOV]; Burden, Susan[Burden.Susan@epa.gov]; Hautamaki, Jared[Hautamaki.Jared@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; McDuffie, Charmaine[McDuffie.Charmaine@epa.gov]; Dickerson, Aaron[o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4fe6ad37a29b4962b7797c50b9f1e55b-Dickerson, Aaron]; Naples, Eileen[Naples.Eileen@epa.gov]; Nitsch, Chad[Nitsch.Chad@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Willis, Sharnett[Willis.Sharnett@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]
From: Kreutzer, David
Sent: Mon 3/13/2017 6:59:19 PM
Subject: RE: EPA Phone Directory March 2017

Both of my phone numbers are wrong.

My desk phone is 564-3113

My cell phone is 202-384-8061

David Kreutzer

From: Woodward, Cheryl

Sent: Monday, March 13, 2017 2:30 PM

To: Anderson, Denise <anderson.denise@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Benton, Donald <benton.donald@epa.gov>; Burley, Veronica <Burley.Veronica@epa.gov>; Burton, Tamika <burton.tamika@epa.gov>; Davis, Gail <Davis.Gail@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Dickerson, Aaron <dickerson.aaron@epa.gov>; Ericksen, Doug <ericksen.doug@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Greaves, Holly <greaves.holly@epa.gov>; Jenkins, Donna <Jenkins.Donna@epa.gov>; Konkus, John <konkus.john@epa.gov>; Kreutzer, David <kreutzer.david@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>; Reeder, John <Reeder.John@epa.gov>; Schnare, David <schnare.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Sugiyama, George <sugiyama.george@epa.gov>; Willis, Sharnett <Willis.Sharnett@epa.gov>; Woodward, Cheryl <Woodward.Cheryl@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Baca, Andrew <Baca.Andrew@epa.gov>; Bailey, Ethel <Bailey.Ethel@epa.gov>; Bednar, Georgia <bednar.georgia@epa.gov>; Benitez-Clark, Rowena <benitez-clark.rowena@epa.gov>; Benson, Sheila <Benson.Sheila@epa.gov>; Bergman, Shawna <Bergman.Shawna@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>; Bloom, David <Bloom.David@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Edwards, Crystal <Edwards.Crystal@epa.gov>; Elkins, Arthur <Elkins.Arthur@epa.gov>; Fine, Steven <fine.steven@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Gantt, Melissa <Gantt.Melissa@epa.gov>; Gentry, Nathan <Gentry.Nathan@epa.gov>; Grogard, Megan <Grogard.Megan@epa.gov>; Gude, Karen <Gude.Karen@epa.gov>; Hill, Randy <Hill.Randy@epa.gov>; Hill, Teresa <Hill.Teresa@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Hitchens, Lynnnann <hitchens.lynnann@epa.gov>; Jones, Gail-R <Jones.Gail-R@epa.gov>; Jones, Tawaunna <Jones.Tawaunna@epa.gov>; Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>; Kavlock, Robert <Kavlock.Robert@epa.gov>; Kenely, Caroline <Kenely.Caroline@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Loving, Shanita <Loving.Shanita@epa.gov>; Mason, Darryl <Mason.Darryl@epa.gov>; McPherson, Mark <McPherson.Mark@epa.gov>; Milhouse, Gloria <Milhouse.Gloria@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Nishida, Jane <Nishida.Jane@epa.gov>; Osborne, Howard <Osborne.Howard@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Patrick, Monique <Patrick.Monique@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Penman, Crystal <Penman.Crystal@epa.gov>; Plotkin, Viktoriya <Plotkin.Viktoriya@epa.gov>; Robbins, Chris <Robbins.Chris@epa.gov>; Rodan, Bruce <rodan.bruce@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Sheehan, Charles <Sheehan.Charles@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Showman, John <Showman.John@epa.gov>; Silver, Edna <Silver.Edna@epa.gov>; Simon, Nigel <Simon.Nigel@epa.gov>; Sjogren, Mya <Sjogren.Mya@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Stewart, Lakita <Stewart.Lakita@epa.gov>; Veney, Carla <Veney.Carla@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>; Washington, Yvette <Washington.Yvette@epa.gov>; Wheeler, Kimberly <Wheeler.Kimberly@epa.gov>; Wilson, Rita <Wilson.Rita@epa.gov>; Wise, Louise <Wise.Louise@epa.gov>; Brennan, Thomas <Brennan.Thomas@epa.gov>; Brown, Caroline <Brown.Caroline@epa.gov>; Caraballo, Mario <Caraballo.Mario@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Gray, Doris <Gray.Doris@epa.gov>; Hull, George

<Hull.George@epa.gov>; Kenny, Shannon <Kenny.Shannon@epa.gov>; Kime, Robin
 <Kime.Robin@epa.gov>; Kling, David <Kling.Dave@epa.gov>; Poole, Jacqueline
 <Poole.Jacqueline@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Scales,
 Wuanisha <Scales.Wuanisha@epa.gov>; Sowell, Sarah <Sowell.Sarah@epa.gov>; Stewart-
 Downer, Sherry <Stewart-Downer.Sherry@epa.gov>; Valentine, Julia
 <Valentine.Julia@epa.gov>; Wilkes, Quianna <Wilkes.Quianna@epa.gov>; Williams, Steven
 <Williams.Steven@epa.gov>; Allen, Reginald <Allen.Reginald@epa.gov>; Bachle, Laura
 <Bachle.Laura@epa.gov>; Benjamin-Sirmons, Denise <Benjamin-Sirmons.Denise@epa.gov>;
 Curtis, Mellasonda <Curtis.Mellasonda@epa.gov>; Cuscino, Glen <Cuscino.Glen@epa.gov>;
 Darden, Cynthia <Darden.Cynthia@epa.gov>; Dent, Bridgette <Dent.Bridgette@epa.gov>;
 Etzel, Ruth <Etzel.Ruth@epa.gov>; Ferris, Lena <Ferris.Lena@epa.gov>; Foos, Brenda
 <Foos.Brenda@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Hope, Brian
 <Hope.Brian@epa.gov>; Lancaster, Tina <Lancaster.Tina@epa.gov>; Lawrence, Tanya
 <Lawrence.Tanya@epa.gov>; Lesperance, Twanna <Lesperance.Twanna@epa.gov>;
 Livingston, Keith <Livingston.Keith@epa.gov>; Newton, Jonathan
 <Newton.Jonathan@epa.gov>; Reed, Khesha <Reed.Khesha@epa.gov>; Rogers, JoanB
 <Rogers.JoanB@epa.gov>; Sanzone, Stephanie <Sanzone.Stephanie@epa.gov>; Washington,
 Valerie <Washington.Valerie@epa.gov>; Whickum, Cheryl <Whickum.Cheryl@epa.gov>;
 Zarba, Christopher <Zarba.Christopher@epa.gov>; Armstead, John A.
 <Armstead.John@epa.gov>; Bohan, Suzanne <bohan.suzanne@epa.gov>; Bonner, Brenda
 <Bonner.Brenda@epa.gov>; Cacho, Julia <Cacho.Julia@epa.gov>; Carey, Curtis
 <Carey.Curtis@epa.gov>; Chu, Ed <Chu.Ed@epa.gov>; Coleman, Sam
 <Coleman.Sam@epa.gov>; Correa, Laura <correa.laura@epa.gov>; Erikson, Linda
 <Erikson.Linda@epa.gov>; Flournoy, Karen <Flournoy.Karen@epa.gov>; Gaudario, Abigail
 <Gaudario.Abigail@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Gray, David
 <gray.david@epa.gov>; Gutierrez, Claudia <Gutierrez.Claudia@epa.gov>; Gutro, Doug
 <Gutro.Doug@epa.gov>; Heard, Anne <Heard.Anne@epa.gov>; Hickey, Maureen
 <Hickey.Maureen@epa.gov>; Holsman, Marianne <Holsman.Marianne@epa.gov>; Johnson,
 Belinda <Johnson.Belinda@epa.gov>; Jones-Johnson, Shea <Jones-
 Johnson.Shea@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Kao, Jessica
 <Kao.Jessica@epa.gov>; Kaplan, Robert <kaplan.robert@epa.gov>; Kelley, Jeff
 <kelley.jeff@epa.gov>; Kelly, Joyce <Kelly.Joyce@epa.gov>; Lapierre, Kenneth
 <Lapierre.Kenneth@epa.gov>; Lewis, Jacqueline <Lewis.Jacqueline@epa.gov>; Lincoln, Larry
 <Lincoln.Larry@epa.gov>; Lindsay, Jane <lindsay.jane@epa.gov>; Martinez, Isidra
 <Martinez.Isidra@epa.gov>; Mears, Mary <Mears.Mary@epa.gov>; Moraff, Kenneth
 <Moraff.Ken@epa.gov>; Mugdan, Walter <Mugdan.Walter@epa.gov>; Mutter, Andrew
 <mutter.andrew@epa.gov>; Newton, Cheryl <Newton.Cheryl@epa.gov>; Opalski, Dan
 <Opalski.Dan@epa.gov>; Peters, Dana <Peters.Dana@epa.gov>; Pirzadeh, Michelle
 <Pirzadeh.Michelle@epa.gov>; Purnell, Rhonda <Purnell.rhonda@epa.gov>; Rodrigues, Cecil
 <rodrigues.cecil@epa.gov>; Rowan, Anne <rowan.anne@epa.gov>; Schaaf, Eric
 <Schaaf.Eric@epa.gov>; Searfoss, Renee <searfoss.renee@epa.gov>; Strauss, Alexis
 <Strauss.Alexis@epa.gov>; Szaro, Deb <Szaro.Deb@epa.gov>; Thomas, Deb
 <thomas.debrah@epa.gov>; Tyler, Kendra <Tyler.Kendra@epa.gov>; Tyson, Linda
 <Tyson.Linda@epa.gov>; Varcoe, Betsy <Varcoe.Betsy@epa.gov>; Williams, Felicia
 <Williams.Felicia@epa.gov>; Williams, Odessa <Williams.Odessa@epa.gov>; Zito, Kelly
 <ZITO.KELLY@EPA.GOV>; Burden, Susan <Burden.Susan@epa.gov>; Hautamaki, Jared
 <Hautamaki.Jared@epa.gov>; Knapp, Kristien <Knapp.Kristien@epa.gov>; McDuffie,
 Charmaine <McDuffie.Charmaine@epa.gov>; Dickerson, Aaron; Naples, Eileen
 <Naples.Eileen@epa.gov>; Nitsch, Chad <Nitsch.Chad@epa.gov>; Threet, Derek
 <Threet.Derek@epa.gov>; Willis, Sharnett <Willis.Sharnett@epa.gov>; Brown, Byron
 <brown.byron@epa.gov>; Greaves, Holly <greaves.holly@epa.gov>; Greenwalt, Sarah

<greenwalt.sarah@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>
Subject: EPA Phone Directory March 2017

NOT FOR DISTRIBUTION OR FORWARDING

Please note that because this directory includes some personal contact information, it is only intended for limited distribution to those employees listed in the directory.

If you have questions, edits or updates, please contact Cheryl Woodward at woodward.cheryl@epa.gov or (202) 564-1274.

Cheryl Woodward

Program Assistant

Office of the Administrator

U.S. Environment Protection Agency (EPA)

1200 Pennsylvania Avenue, NW

MC: 1101A, Room 3000 WJC South

Washington, DC 20460

(202) 564-1274 Direct line

(202) 564-4700 Office line

Confidentiality Warning: This message and any attachments are intended only for the use of the recipient(s), are confidential, and may be privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of all or any portion of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return email and delete this message and any attachments from your system.

From: Benton, Donald
Location: WJC-N 3412
Importance: High
Subject: Canceled: Trump Administration Team
Start Date/Time: Thur 3/2/2017 9:00:00 PM
End Date/Time: Thur 3/2/2017 10:00:00 PM

From: Benton, Donald
Location: WJC-N 3412
Importance: High
Subject: Canceled: Trump Administration Team
Start Date/Time: Tue 2/28/2017 9:00:00 PM
End Date/Time: Tue 2/28/2017 10:00:00 PM

Since we are all being integrated into the agency in our respective roles, there is no need to continue our group meetings. Each of you will be meeting with your respective department and office heads in your own meetings. As Presidential Appointees, Charles and I will continue to be available to you individually if you need my assistance in any matter.

I cannot say enough about the fantastic job you have all done here over the last 6 weeks. I will remember it as one of the best team experiences I have had in my life. I know that you will move forward and continue to do your part to Make America Great Again and to make President Trump and Administrator Pruitt wildly successful in their roles.

Thank you for Everything,
Don

From: Penman, Crystal

Location: 3233 WJCE

Importance: Normal

Subject: Clean Water Rule Call in **Personal Phone/Ex. 6**

Start Date/Time: Wed 3/8/2017 4:00:00 PM

End Date/Time: Wed 3/8/2017 4:45:00 PM

To: Munoz, Charles[munoz.charles@epa.gov]
Cc: Konkus, John[konkus.john@epa.gov]; Schnare, David[schnare.david@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Hull, George[Hull.George@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]
From: Richardson, RobinH
Sent: Tue 3/7/2017 2:32:23 PM
Subject: Coordination meeting

Hi Charles –

I stopped by earlier to let you know I scheduled a coordination meeting of each of the NPMs' POCs that are available to assist in the AA Senate confirmation process. The thought was, while it's early in the process and there is no immediate need, to take time to introduce the POCs to the OCIR Congressional Team, you, if you like, and any others that would be involved in the process, walk through the potential steps in the process, ala what we discussed several weeks ago, and answer any questions. It's intended to be an informal introduction for the team.

The meeting is scheduled for tomorrow, Wednesday, 3/8/17, at 1pm, in WJC-N 3428. I recognize it may seem soon and am happy to reschedule to a later date. Please let me know your preferences.

Thank you, Robin

Robin H Richardson

Principal Deputy Associate Administrator

Office of Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-3358 (desk)

703-581-5814 (cell)

richardson.robinh@epa.gov

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Loop, Travis[Loop.Travis@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Klasen, Matthew[Klasen.Matthew@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Kaiser, Sven-Erik[Kaiser.Sven-Erik@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Schnare, David[schnare.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; Frithsen, Jeff[Frithsen.Jeff@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; McDavit, Michael W.[Mcdavit.Michael@epa.gov]; Stokely, Peter[Stokely.Peter@epa.gov]; Frazer, Brian[Frazer.Brian@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Keating, Jim[Keating.Jim@epa.gov]; ian.p.osullivan@usace.army.mil[ian.p.osullivan@usace.army.mil]; jennifer.a.moyer@usace.army.mil[jennifer.a.moyer@usace.army.mil]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]
Cc: McGartland, Al[McGartland.Al@epa.gov]; FertikEdgerton, Rachel[FertikEdgerton.Rachel@epa.gov]; Borum, Denis[Borum.Denis@epa.gov]; Orvin, Chris[Orvin.Chris@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Pollins, Mark[Pollins.Mark@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Cherry, Andrew[Cherry.Andrew@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Theis, Joseph[Theis.Joseph@epa.gov]; Bahk, Benjamin[Bahk.Benjamin@epa.gov]; Lamont, Douglas W SES (US)[douglas.w.lamont2.civ@mail.mil]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]; Schmauder, Craig R SES (US)[craig.r.schmauder.civ@mail.mil]; Barger, Cindy S CIV USARMY HQDA ASA CW (US)[cindy.s.barger.civ@mail.mil]
From: Kwok, Rose
Sent: Wed 3/15/2017 2:04:32 PM
Subject: RE: Clean Water Rule Non-responsive Conference Code/Ex.6
[WOTUS2 briefing paper 3.14.17 - clean.docx](#)
[Rule Timeline short v4.xlsx](#)
[WOTUS2 briefingTableShort - clean.docx](#)

For those on the phone, here are the materials we will discuss today.

-----Original Appointment-----

From: Shapiro, Mike

Sent: Tuesday, January 17, 2017 7:47 AM

To: Shapiro, Mike; Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen, Damaris; Campbell, Ann; Schnare, David; Schwab, Justin; Bangerter, Layne; Frithsen, Jeff; Nickerson, William; McDavit, Michael W.; Stokely, Peter; Frazer, Brian; Dravis, Samantha; Keating, Jim; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; Greenwalt, Sarah; David.F.Dale@usace.army.mil

Cc: McGartland, Al; FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Pollins, Mark; Kupchan, Simma; Cherry, Andrew; Lousberg, Macara; Theis, Joseph; Bahk, Benjamin; Lamont, Douglas W SES (US); Evalenko, Sandy; Schmauder, Craig R SES (US); Barger, Cindy S CIV USARMY HQDA ASA CW (US)

Subject: Clean Water Rule Call in Non-responsive Conference Code/Ex.6

When: Wednesday, March 15, 2017 10:00 AM-10:45 AM (UTC-05:00) Eastern Time (US & Canada).

Where: 3233 WJCE

Draft Schedule for Discussion: Revised "Waters of the US" Proposed Regulation to OMB (Draft 3/7/17)

ACTION	Week															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14		
Rule Drafting																
Brief Administrator; receive direction on policy and process																
Coordination with Army Corps on options selection, timeline																
First draft proposed rule text																
First draft proposal preamble text																
Update for agencies' leadership regarding early analytical work																
Circulate draft proposed rule and preamble text for agencies' management review and discussion																
Revise draft proposal package reflecting management input																
Final coordination with Army Corps on revised proposal rule package																
Revise final draft proposed rule package reflecting coordination with Army Corps																
Submit revised draft proposed rule package to OMB for interagency review																
Required Analyses and Coordination																
Economic Analysis (including data collection and cost-benefit analysis)																
Federalism consultation (excluding typical written comment period)																
Tribal consultation (excluding typical written comment period)																
Regulatory Flexibility Act (assumes certify no SISNOSE and informal input only)																
Unfunded Mandates Reform Act																
Environmental Justice																
Completed before pre-publication: NEPA, ESA, contractor for comment management																→

Key Assumptions:

- Access to political decisionmakers.
- OMB agreement on rule package contents and timing.
- Army Corps will provide data and manpower necessary for economic analysis.
- Rulemaking timeframe not affected by litigation on CWR.
- Senior leadership direction to abbreviate or forego certain internal EPA rulemaking processes (no HQ-Regional workgroup, no Options Selection, no Final Agency Review).
- Consultation with states, tribes, the EJ community, and small businesses will be compressed and succinct (No SBRFA panel required). Additional consultation possible after proposal.
- No additional scientific analysis is required beyond that already developed for prior rulemakings, including no SAB review.
- NEPA and ESA considerations and conclusions completed after OMB review and before proposal publication.

DELIBERATIVE PROCESS; CONFIDENTIAL

ED_001612_00008742-00001

Draft Schedule for Discussion: Revised "Waters of the US" Proposed Regulation to OMB (Draft 3/7/17)

--

DELIBERATIVE PROCESS; CONFIDENTIAL

Purpose: Discuss potential options and receive guidance on rulemaking direction and timing for submitting to OMB for interagency review a draft proposed “waters of the US” rule consistent with the President’s E.O.

Critical-path timing conditions/assumptions to achieve quick process:

- EPA/Army senior leadership policy decisions on rule content and process immediately.
- Proposed rule of this significance normally takes 9 months to initiate OMB review; abbreviating or foregoing standard internal rulemaking processes, analyses, and other administrative requirements can shorten that timeframe:
 - Abbreviated consultation with states, tribes, the EJ community, and small entities;
 - Up-front agreement from OMB as to approach to economic analysis, rule package content, timing, and interagency review process;
 - No new scientific analysis would be conducted.
- Delay preliminary conclusions regarding any required NEPA or ESA analysis/consultation until after proposal.
- Regular access to decision-makers.

Overview of potential policy options and implications¹

As policy decisions will be needed very soon, we have outlined three overall policy options for deliberation where jurisdiction can be scaled. Note that one option can be selected as the proposed option and comment can be sought on the others, in order to preserve flexibility for the Administrator and the ASA (or surrogate) in the rulemaking process.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Relatively Permanent Waters	2008 Guidance: “Year-round or continuous flow at least seasonally”
	Numeric (e.g., 30/60/90 days)
	Groundwater contribution (excludes ephemerals)
Wetlands, continuous surface connection	Directly abutting
	Distance threshold
	100yr floodplain
Significant Nexus	2008 Guidance Approach (ecological and hydrological considerations)
	Quantified functional evidence
	Distance limit
“Similarly situated” aggregation	Single reach + adjacent wetl.
	By stream order in watershed
	Watershed (e.g. point of entry)

Deliberative Process Privilege/Ex. 5

Scientific record

Time to proposed rule

Implementability

Deliberative Process Privilege/Ex. 5

To: Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Kaplan, Robert[kaplan.robert@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 3:54:49 PM
Subject: Ferroalloy NESHAP and Eramet Marietta (Ohio)

On January 18th, 2017, EPA formally denied reconsideration of several key aspects of the final Ferroalloy NESHAP, the effect of which would have been to force closure of U.S. ferroalloy facilities, including the Eramet Marietta facility in Ohio, and the loss of 90 jobs at the Eramet site. Ohio Attorney General Mike DeWine wrote the agency on February 22nd, 2017, asking for “prompt attention” to this problem.

In response, I contacted Region 5 Acting Regional Administrator Bob Kaplan and asked him to use appropriate alternative dispute resolution techniques to address the issue in a manner that would allow the plant to come into compliance without loss of market share or jobs. Working with Eramet and the State, they quickly developed a compliance strategy that would leave the company whole and devolve compliance authority to the State of Ohio. Half of the emissions reduction equipment is already in place and the firm has until June 2017 to install the rest, with the option to seek more time if needed, regardless of the number of years it will take. Ohio has unfettered discretion to negotiate any necessary new deadline and intends to provide as much time as possible.

This morning I received a call from Congressman Bill Johnson’s office asking about the issue. (David Rardine Personal Phone/Ex. 6) I informed him of the successful resolution of this matter and he thanked us for our rapid resolution and the relief to Eramet.

This rule may be a good candidate for reconsideration and removal from our books (in a 2 for 1 swap for some other rule), especially in light of the July 10, 2015 letter from four Senators and four Congressmen seeking reconsideration of the rule. (Senators Capito, Manchin, Portman, Brown, and Congressmen McKinley, Johnson, Jenkins and Mooney.)

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Richardson, RobinH[Richardson.RobinH@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Benton, Donald
Sent: Sat 2/18/2017 8:00:16 PM
Subject: FW: Senate Letter to Administrator Pruitt
2017.02.17 - Pruitt EPA Letter on RVP.pdf

Another copy of the same letter, different office

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Mogler, Devin (Ernst) [mailto:Devin_Mogler@ernst.senate.gov]
Sent: Friday, February 17, 2017 2:29 PM
To: Benton, Donald <benton.donald@epa.gov>; Jackson, Ryan (Inhofe) <Ryan_Jackson@inhofe.senate.gov>
Subject: Senate Letter to Administrator Pruitt

Ryan and Donald,

Congratulations to Mr. Pruitt on his confirmation today. Can you please see that this letter gets into the right hands?

Thank you,

Devin Mogler

Legislative Assistant

Senator Joni Ernst

United States Senate

WASHINGTON, DC 20510

February 17, 2017

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Mr. Pruitt:

We write today to express our willingness to work with you and the Environmental Protection Agency (EPA) to grow our country's economy and support American jobs. Thank you for all of the answers you provided to us and our colleagues over the course of your confirmation process in the Senate. We are anxious to support you in your efforts to remove harmful and unnecessary regulations that serve as barriers to economic growth and effective environmental protection.

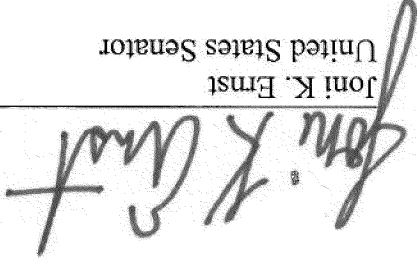
One such barrier we would like to highlight is a nonsensical regulation that makes it more difficult to sell gasoline with ethanol content above ten percent during the summer months. The Clean Air Act (CAA) limits the volatility of gasoline, as measured by Reid Vapor Pressure (RVP), to nine pounds per square inch (psi) from June 1 – September 15. In 1989, the EPA adopted an interim 1-psi RVP "waiver" for gasoline blends containing ten percent ethanol (E10), and this waiver was later codified through amendments to the Clean Air Act in 1990.

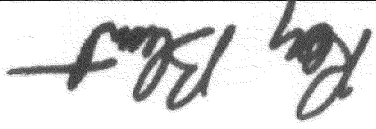
Despite repeated requests, the EPA has refused to grant this same 1-psi waiver to gasoline blends that contain more than ten percent ethanol, such as E15. As a result, sales of E15 in most of the country are severely restricted between June 1 and September 15 – the peak summer driving season. Retailers are forced to find specially tailored low-RVP gasoline blendstock to make E15 in the summertime, or avoid selling the fuel altogether. Neither of these options are practical or economical for most retailers and their customers.

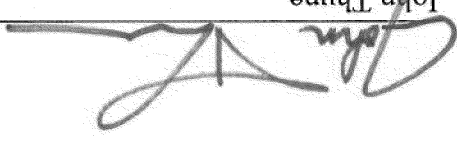
Ironically, the volatility of E15 and other higher blends is actually lower than that of E10, meaning there is a slight evaporative emissions benefit associated with replacing a gallon of E10 with a gallon of E15. Unfortunately, without the waiver being extended, this archaic policy prevents E15 from enjoying the same treatment year round, discouraging retailers from installing infrastructure to distribute these fuel alternatives, and ultimately increasing costs for consumers.

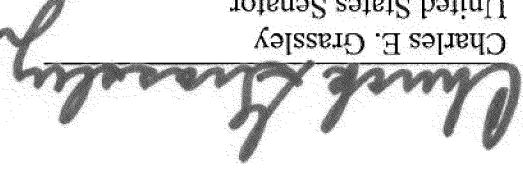
We ask that you extend the 1-psi RVP waiver to E15 and higher blends, to eliminate this needless obstacle to consumer choice. We look forward to working with you to find a permanent solution to this issue.

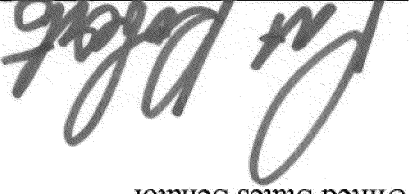
Sincerely,


Joni K. Ernst
United States Senator


Roy Blunt
United States Senator


John Thune
United States Senator


Charles E. Grassley
United States Senator


Pat Roberts
United States Senator

To: Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]
From: Benton, Donald
Sent: Sat 2/18/2017 7:52:43 PM
Subject: FW: Senate Letter to Administrator Pruitt
2017.02.17 - Pruitt EPA Letter on RVP.pdf

A congressional congrats and request.

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Mogler, Devin (Ernst) [mailto:Devin_Mogler@ernst.senate.gov]
Sent: Friday, February 17, 2017 2:57 PM
To: Benton, Donald <benton.donald@epa.gov>; Jackson, Ryan (Inhofe) <Ryan_Jackson@inhofe.senate.gov>
Subject: RE: Senate Letter to Administrator Pruitt

Apologize for the inverted image on the prior email. Thank you in advance for seeing this gets to Mr. Pruitt.

Devin Mogler | Legislative Assistant

U.S. Senator Joni Ernst | 111 Russell

From: Mogler, Devin (Ernst)

Sent: Friday, February 17, 2017 2:29 PM

To: 'Benton.Donald@epa.gov' <Benton.Donald@epa.gov>; Jackson, Ryan (Inhofe) <Ryan_Jackson@inhofe.senate.gov>

Subject: Senate Letter to Administrator Pruitt

Ryan and Donald,

Congratulations to Mr. Pruitt on his confirmation today. Can you please see that this letter gets into the right hands?

Thank you,

Devin Mogler

Legislative Assistant

Senator Joni Ernst

United States Senate

WASHINGTON, DC 20510

February 17, 2017

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Mr. Pruitt:

We write today to express our willingness to work with you and the Environmental Protection Agency (EPA) to grow our country's economy and support American jobs. Thank you for all of the answers you provided to us and our colleagues over the course of your confirmation process in the Senate. We are anxious to support you in your efforts to remove harmful and unnecessary regulations that serve as barriers to economic growth and effective environmental protection.

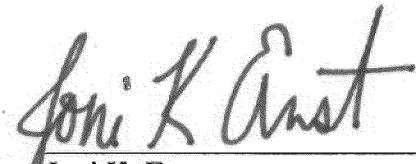
One such barrier we would like to highlight is a nonsensical regulation that makes it more difficult to sell gasoline with ethanol content above ten percent during the summer months. The Clean Air Act (CAA) limits the volatility of gasoline, as measured by Reid Vapor Pressure (RVP), to nine pounds per square inch (psi) from June 1 – September 15. In 1989, the EPA adopted an interim 1-psi RVP “waiver” for gasoline blends containing ten percent ethanol (E10), and this waiver was later codified through amendments to the Clean Air Act in 1990.

Despite repeated requests, the EPA has refused to grant this same 1-psi waiver to gasoline blends that contain more than ten percent ethanol, such as E15. As a result, sales of E15 in most of the country are severely restricted between June 1 and September 15 – the peak summer driving season. Retailers are forced to find specially tailored low-RVP gasoline blendstock to make E15 in the summertime, or avoid selling the fuel altogether. Neither of these options are practical or economical for most retailers and their customers.

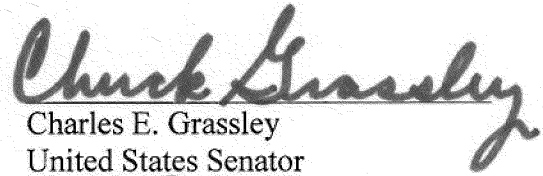
Ironically, the volatility of E15 and other higher blends is actually lower than that of E10, meaning there is a slight evaporative emissions benefit associated with replacing a gallon of E10 with a gallon of E15. Unfortunately, without the waiver being extended, this archaic policy prevents E15 from enjoying the same treatment year round, discouraging retailers from installing infrastructure to distribute these fuel alternatives, and ultimately increasing costs for consumers.

We ask that you extend the 1-psi RVP waiver to E15 and higher blends, to eliminate this needless obstacle to consumer choice. We look forward to working with you to find a permanent solution to this issue.


Sincerely,



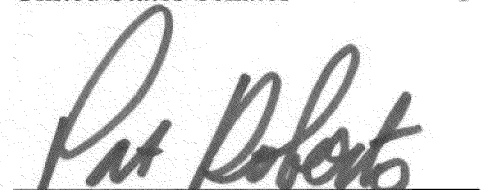
Joni K. Ernst
United States Senator




Charles E. Grassley
United States Senator



Roy Blunt
United States Senator



Pat Roberts
United States Senator



John Thune
United States Senator

To: Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Michelle Hale[Personal Phone/Ex. 6]; Bangerter, Layne[bangerter.layne@epa.gov]
From: Benton, Donald
Sent: Sat 2/18/2017 7:42:42 PM
Subject: FW: Memo for Administrator Pruitt re: EPA Actions

Request for meeting with Dairy Federation concerning Region 10 behavior.

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Dan Wood [mailto:dan@wastatedairy.com]
Sent: Friday, February 17, 2017 4:28 PM
To: Benton, Donald <benton.donald@epa.gov>
Cc: Dan Wood <dan@wastatedairy.com>
Subject: FW: Memo for Administrator Pruitt re: EPA Actions

Congratulations on the Senate confirmation of the appointment of Scott Pruitt as EPA Administrator.

I am re-sending the email summarizing the issues we discussed that should be in front of the Administrator.

We have cause to be in Washington, D.C. next week and would be glad to bring an affected

dairy farmer, the researcher who compiled the timeline from the FOIA records on the illegal “What’s Upstream” campaign, and someone who sits on the Groundwater Management Area in the Yakima Valley.

These are all timely issues that merit attention and resolution, and present an opportunity for the EPA and new Administration to demonstrate a balanced commitment to both environmental concerns and a positive business climate.

We can have people on a plane with a couple days’ notice; the group is ready to come to speak with you and the Administrator.

Thanks,

Dan Wood

Executive Director

Washington State Dairy Federation

PO Box 1768 Elma, WA 98541

Dan@wastatedairy.com

Personal Phone/Ex. 6

It’s OK to call any time – early, late, weekends are OK. Really.

From: Dan Wood

Sent: Tuesday, February 14, 2017 9:39 AM

To: Benton.Donald@EPA.gov

Cc: Dan Wood <dan@wastatedairy.com>

Subject: Memo for Administrator Pruitt re: EPA Actions

Scott Pruitt, Administrator

Environmental Protection Agency

Via email to Benton.Donald@EPA.gov

C: Don Benton,

Senior White House Advisor

Via email to Benton.Donald@EPA.gov

February 13, 2017

Dear Administrator Pruitt:

There are several areas of accountability and questionable agency actions that merit your immediate attention as EPA Administrator. Some actions have already gained the attention of Congressional investigators, and been subjects of complaints to the Office of Inspector General and the Washington State Public Disclosure Commission.

We request an appointment to present documentation of each of the following matters and to request specific actions by the EPA.

1. Ensure the investigation of the “What’s Upstream” campaign is completed.

In 2015 the Government Accountability Office determined that EPA officials in Washington, D.C. had broken federal law by using social media to promote the Waters of the US Rule.

Subsequently, the Region 10 Administrator allowed more than \$600,000 of public money to be spent on an overtly political campaign filled with false statements aimed at passing laws harmful to farmers. These illegal campaign expenditures were allowed, despite staff objections and actions subordinate staff had taken to halt the illegal campaign. The Regional Administrator further communicated false information to Congress about this campaign and EPA's role in it.

Public documents and extensive reporting by *The Capital Press* (a Northwest agricultural newspaper) raise questions about the degree to which then-Administrator Gina McCarthy had been aware and possibly directed the activities. Documents show the illegal campaign had been halted, then re-authorized after a visit from Administrator McCarthy.

To ensure that officials are held accountable, the Office of Inspector General needs to complete the investigation of the "What's Upstream" campaign and EPA funding of it, as was requested by Congressional leaders. Enforcement action must wait until the Office of Inspector General completes the investigation, and we are asking that you help ensure this investigation is done thoroughly, promptly and fairly and that the results are made public.

The EPA has not completely responded to FOIA records requests in this matter. Full disclosure of requested public records is paramount to accountability, as is cooperation with Congressional investigators and the Office of Inspector General.

Representative Dan Newhouse and Senator Pat Roberts are key Congressional contacts in this matter.

Resources:

1. We would be glad to bring to Washington, D.C. the executive director of Save Family Farming, who has filed the FOIA request and compiled the timeline and key actions in this matter.

2. We can provide reports and timelines from the investigative report by *The Capital Press*.

3. We can provide a summary of the filings and status of investigation by the Washington State Public Disclosure Commission

2. Review the science and behavior of EPA Region 10 staff with regard to the September 2012 Report EPA-910-R-12-003.

This report was roundly criticized by credentialed PhDs and professionals from research universities, NRCS, and state and local conservation agencies. Initially, EPA Region 10 posted those comments on their Web site. Subsequently, EPA Region 10 has removed the critical content from the Web site, making it no longer available for public view.

This extensively-criticized report led to an Administrative Order on Consent after EPA said the subject dairies could take EPA to the Ninth Circuit Court of Appeals if they wanted to challenge the report. The report was subsequently used as “evidence” in a federal lawsuit that resulted in an unprecedented ruling that held that fertilizing a field with natural livestock manure equates to an illegal dumping of hazardous waste under the Resource Conservation and Recovery Act (RCRA).

After the farm agreed to the Administrative Order on Consent, complied with the provisions of the order, and invested millions of dollars into technology and conservation, EPA refused to issue a statement as to the good works and compliance of the farm.

Participants and eye-witnesses to the conversations with the Region 10 Administrator can attest to the threats and discussions of involving the Ninth Circuit Court.

Unless there has been an illegal permanent destruction of public records, the scientific criticism of **EPA-910-R-12-003** should be archived at EPA Region 10. That information should be restored to public viewing on the Web site.

Resources:

1. We would be glad to have one of the subject farmers come to Washington, D.C. to visit with you regarding the impact of these Region 10 actions. The multi-generational farm is struggling to survive because of the costs of the order and subsequent lawsuit.

2. Archives should provide the critical reviews of report **EPA-910-R-12-003**; if the critical evaluations are not found in EPA Region 10 archives, we can go back to original sources to re-located those evaluations.

3. Carefully review the best available science on the important issue of nitrates in drinking water, its health effects, and historic causes in the Yakima Valley.

The Lower Yakima Valley has had high groundwater nitrates for more than 100 years, predating much of the dairy farming in the area.

Despite that documented history, EPA Region 10 has focused on dairies, assuming their responsibility for this historic problem. The actions of the EPA have fanned public criticism, nuisance complaints and lawsuits against dairies.

Nitrates in groundwater is the driving issue in the litigation and enforcement action against farmers. Yet, the EPA refuses to recognize that nitrates above the EPA standard have been present in drinking water in virtually all farming areas since water testing began.

Prior to 2008, the EPA, following the data, focused on on-site septic systems as a primary source of water contamination. Since then, the focus has shifted inappropriately to agriculture. Use of best science to evaluate actual causes should be used to prioritize efforts rather than following the lead of environmental activists seeking new targets for fundraising.

Area dairy farmers, along with other agriculture, local government, state and federal agencies, and others are participating in a **Groundwater Management Area** to research and address sources of groundwater nitrates.

EPA should work more cooperatively and with an objective approach to the Groundwater Management Area.

Resources:

1. We would be glad to bring to Washington, D.C. an agricultural representative to the Groundwater Management Area. He can discuss the history and current projects, as well as where EPA can engage more cooperatively.
2. We would be glad to provide recent reviews and focus of the Groundwater Management Area

We look forward to a face-to-face discussion with you and to be a resource to help with understanding and positive changes in these matters involving the EPA.

Dan Wood

Executive Director

Washington State Dairy Federation

PO Box 1768 Elma, WA 98541

Dan@wastatedairy.com

Personal Phone/Ex. 6

It's OK to call any time – early, late, weekends are OK. Really.

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Benton, Donald
Sent: Sat 2/18/2017 7:33:32 PM
Subject: FW: Senate Financial Assurance Letter
02172017 Letter to EPA on CERCLA 108(B) Extension (Pruitt).pdf

Congressional request for extension on Hard Rock Mining

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Harrell, Jeremy (Heller) [mailto:Jeremy_Harrell@heller.senate.gov]
Sent: Friday, February 17, 2017 5:19 PM
To: Benton, Donald <benton.donald@epa.gov>
Subject: Senate Financial Assurance Letter

Mr. Benton,

Congratulations on Administrator Pruitt's confirmation today. We are looking forward to working with him at the EPA.

I wanted to provide an electronic copy of a Senate letter led by Senator Heller, encouraging the Administrator to provide an extension to the comment period for the financial assurance rule on

hard rock mining. The Senator and Administrator Pruitt talked about this issue in depth when they sat down in early January.

Let me know if you have any questions. Have a great weekend.

Jeremy B. Harrell

Senior Legislative Assistant/Nevada Policy Advisor

U.S. Senator Dean Heller (NV)

324 Hart Senate Office Building

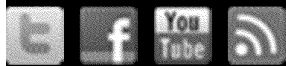
Washington, DC 20510

Phone: (202) 224-6244

Fax: (202) 228-6753

Email: jeremy_harrell@heller.senate.gov

Sign up for Senator Heller's [newsletter](#) or follow him on:



United States Senate

WASHINGTON, DC 20510

February 17, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Dear Administrator Pruitt:

We write to request a 120-day extension of the 60-day public review and comment period currently established by the U.S. Environmental Protection Agency (EPA) for its proposed rule, "Financial Responsibility Requirements Under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry," which was published in the Federal Register on Jan. 11, 2017 (82 FR 3388). This additional time will provide state agencies, local governments, and other affected stakeholders an opportunity to thoroughly examine the contents of this proposal and provide the agency constructive comments.

This proposed rule is a far reaching proposal that will have significant impacts on the mining industry as well as other natural resources industry sectors including chemical manufacturing, oil and gas, and electric utilities. The EPA's Regulatory Impact Analysis estimates that the "financial responsibility amount for the regulated industry is \$7.1 billion." According to its own data, the proposed rule will require hardrock mining companies to incur up to \$171 million per year in new financial assurance costs, while only saving the government \$15.5 million per year. It is our understanding that the affected industries' estimates put the cost of this new federal program even higher. In short, cost of compliance will discourage domestic mineral production and lead to significant job losses in the hard rock mining sector.

The current 60-day comment period, which ends on March 13, 2017, is woefully inadequate to review, evaluate, and prepare meaningful public comments on this complex rulemaking. When the proposed rule was first printed in the Federal Register, it spanned 124 pages and was dwarfed by technical supporting documents and relevant materials that the EPA has cross-referenced as part of the index to the docket. As of the date of this letter, there are now more than 2,300 supporting documents exceeding 323,969 pages, more than half of which were added after the original publication. To make matters worse, key tools that are intended to help affected stakeholders determine the impact of the proposed rule and estimate financial responsibility obligations were not made publicly available by the agency until just recently.

It is important to note that the agency only established a 60-day public comment period for this proposal, a limited window typically afforded to noncontroversial proposals on revisions to existing programs. This proposal is classified as a Tier 1 rule, reserved for the most important and complex rules, and establishes

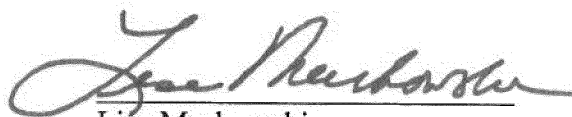
an entirely new federal regulatory program. Given these facts, it is clear an extension of the public review and comment period is necessary.

Thank you for your prompt consideration of this request. Please do not hesitate to contact our offices if we can be of further assistance.

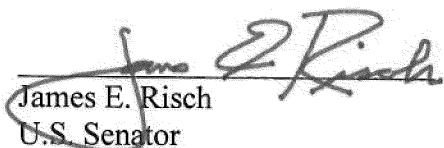
Sincerely,



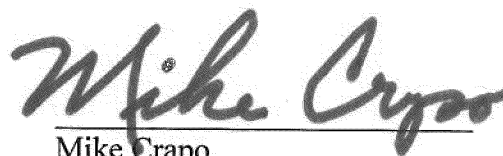
Dean Heller
U.S. Senator



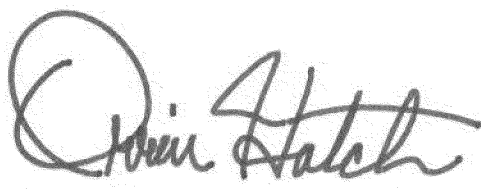
Lisa Murkowski
U.S. Senator



James E. Risch
U.S. Senator



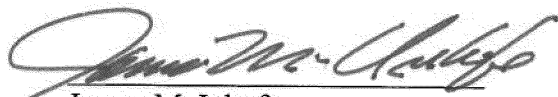
Mike Crapo
U.S. Senator



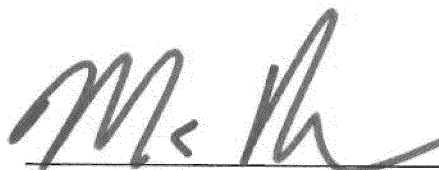
Orrin Hatch
U.S. Senator



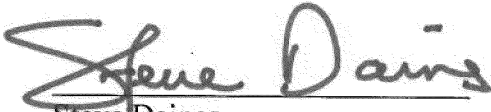
Dan Sullivan
U.S. Senator



James M. Inhofe
U.S. Senator



Marco Rubio
U.S. Senator



Steve Daines
U.S. Senator



Michael S. Lee
U.S. Senator



Cory Gardner
U.S. Senator

cc: Mr. Donald Benton, White House Liaison, U.S. Environmental Protection Agency

From: Anderson, Denise
Location: Alm Conference Room
Importance: High
Subject: Canceled: Meeting Re: Pebble Mine
Start Date/Time: Wed 3/8/2017 10:00:00 PM
End Date/Time: Wed 3/8/2017 10:45:00 PM
Pebble Briefing Req 030117.docx

POC: Ann Campbell, 202-566-1370
SCt: Denise Anderson

Non-responsive Conference Code/Ex.6

EPA Staff (Required): David Schnare (OA), Justin Schwab (OA), Layne Bangerter (OA); Mike Flynn (OA), Mike Shapiro (OW), John Goodin (OW); Kevin Minoli (OGC); Steven Neugeboren (OGC); Michelle Pirzadeh (R10); David Allnut (R10); Allyn Stern (R10)

EPA Staff (Optional): Derek Threet (OA), Ann Campbell (OA),

To: Dravis, Samantha[dravis.samantha@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Schnare, David[schnare.david@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]
Cc: Connors, Sandra[Connors.Sandra@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Shapiro, Mike
Sent: Wed 3/15/2017 2:42:18 AM
Subject: FW: ACTION:: DW Needs Survey Assessment Report to Congress
[Needs Survey report 1-11.docx](#)

All,

As reported in OW's weekly, OMB is requesting confirmation from the current Administration to continue and complete review of the 2015 Drinking Water Infrastructure Needs Survey and Assessment: Sixth Report to Congress. (Attached). Section 1452(h) of the Safe Drinking Water Act requires the EPA to conduct a needs survey and assessment and to provide a report to Congress on the results every four years. The purpose of the assessment is to estimate the 20-year capital investment needs for those public water systems eligible to receive Drinking Water State Revolving Fund assistance. Section 1452(a)(1)(D)(ii) of the SDWA requires the EPA to use the latest needs assessment results to allocate DWSRF monies to the states.

The 2015 Assessment provides a 20-year estimated total national drinking water infrastructure investment need of \$468.4 billion, a finding that is 10 percent more than the 2011 Assessment, adjusted to 2015 dollars. This increase may be accounted for by water systems gaining more competence with the inventory-based needs determinations and more complete inventories of their infrastructure assets, particularly their transmission and distribution pipes. The survey response rate was 99.7 percent (2,592 responses from 2,600 systems surveyed), the highest response rate in the history of the Needs Assessment, providing a high degree of confidence in the statistical precision of the Assessment's findings.

The results of the Assessment will be the basis for the DWSRF allotment to the states and territories as well as being a factor in the allotment of the DWSRF set asides to U.S. territories and water systems serving American Indian and Alaska Native Villages. For this reason, it is critical that OMB conclude review of the Report quickly and that it get transmitted to Congress as soon as possible, well in advance of the CR expiration.

Thanks for your attention to this. Let me know if you have any questions.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Campbell, Ann

Sent: Tuesday, March 14, 2017 11:08 AM

To: Shapiro, Mike <Shapiro.Mike@epa.gov>

Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>

Subject: ACTION:: DW Needs Survey Assessment Report to Congress

Mike, below is a note to send to Samantha (OP), Layne & Robin (OCIR), Don & David (OA) on the Needs Survey.

+++++

To: Ericksen, Doug[ericksen.doug@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Konkus, John[konkus.john@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]; Schnare, David[schnare.david@epa.gov]; Sugiyama, George[sugiyama.george@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]

From: Kreutzer, David

Sent: Fri 2/17/2017 6:24:13 PM

Subject: Pruitt confirmed

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: Bangerter, Layne
Sent: Fri 3/10/2017 2:11:51 PM
Subject: Change

Had a conflict arise and will not be able to attend. Can you get with me and John Konkus whenever you get to the office? I want to pull the plug on this National League of cities event or they're going to crucify our boss.

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
Cc: Konkus, John[konkus.john@epa.gov]
From: Bangerter, Layne
Sent: Mon 3/13/2017 4:14:40 PM
Subject: FW: Ferroalloy NESHAP and Eramet Marietta (Ohio)

Proud of you David; 90 jobs! This has Media all over it so adding John Konkus.

From: Schnare, David
Sent: Monday, March 13, 2017 11:55 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Kaplan, Robert <kaplan.robert@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Bangerter, Layne <bangerter.layne@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: Ferroalloy NESHAP and Eramet Marietta (Ohio)

On January 18th, 2017, EPA formally denied reconsideration of several key aspects of the final Ferroalloy NESHAP, the effect of which would have been to force closure of U.S. ferroalloy facilities, including the Eramet Marietta facility in Ohio, and the loss of 90 jobs at the Eramet site. Ohio Attorney General Mike DeWine wrote the agency on February 22nd, 2017, asking for “prompt attention” to this problem.

In response, I contacted Region 5 Acting Regional Administrator Bob Kaplan and asked him to use appropriate alternative dispute resolution techniques to address the issue in a manner that would allow the plant to come into compliance without loss of market share or jobs. Working with Eramet and the State, they quickly developed a compliance strategy that would leave the company whole and devolve compliance authority to the State of Ohio. Half of the emissions reduction equipment is already in place and the firm has until June 2017 to install the rest, with the option to seek more time if needed, regardless of the number of years it will take. Ohio has unfettered discretion to negotiate any necessary new deadline and intends to provide as much time as possible.

This morning I received a call from Congressman Bill Johnson’s office asking about the issue. (David Rardine 2-02-225-5705). I informed him of the successful resolution of this matter and he thanked us for our rapid resolution and the relief to Eramet.

This rule may be a good candidate for reconsideration and removal from out books (in a 2 for 1 swap for some other rule), especially in light of the July 10, 2015 letter from four Senators and four Congressmen seeking reconsideration of the rule. (Senators Capito, Manchin, Portman, Brown, and Congressmen McKinley, Johnson, Jenkins and Mooney.)

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]
From: Bangerter, Layne
Sent: Wed 3/15/2017 11:13:14 PM
Subject: Call me sometime Personal Phone/Ex. 6

Sent from my iPhone

From: Schnare, David
Location: 3412 WJC-N
Importance: Normal
Subject: Pruitt Day 1
Start Date/Time: Wed 2/8/2017 7:30:00 PM
End Date/Time: Wed 2/8/2017 8:00:00 PM

From: Dravis, Samantha
Location: 3513A
Importance: Normal
Subject: EPA Gathering Location for the 2:00 p.m. Reg Review Call
Start Date/Time: Fri 3/3/2017 7:00:00 PM
End Date/Time: Fri 3/3/2017 8:00:00 PM

Hi

Can we have another meeting entry next to the existing 2:00 tomorrow on her calendar? It would just have the EPA invites (below) so they know to all gather in Samantha's office to make the call over to OMB. Thanks

Topic: EPA Gathering Location for the 2:00 p.m. Reg Review Call

Date: 3/3

Location: 3513A

Duration: 2:00-3:00

Required: Benton, Donald <benton.donald@epa.gov>; Schnare, David
<schnare.david@epa.gov>

From: Schnare, David
Location: 3412 WJC-N
Importance: Normal
Subject: Pruitt Day 1
Start Date/Time: Mon 2/6/2017 3:00:00 PM
End Date/Time: Mon 2/6/2017 4:00:00 PM

To: Reeder, John[Reeder.John@epa.gov]; Schnare, David[schnare.david@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]; Allen, Reginald[Allen.Reginald@epa.gov]
Sent: Wed 2/15/2017 2:57:52 PM
Subject: RE: Pruitt oath

It is my understanding that the only oath Scott takes is the one administered by the VPOTUS. All he will need here is badging and ethics briefing, correct?

Don
Senator Don Benton
Senior White House Advisor
Office of the Administrator
202.564.4711

-----Original Message-----

From: Reeder, John
Sent: Monday, February 13, 2017 9:35 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Benton, Donald <benton.donald@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Allen, Reginald <Allen.Reginald@epa.gov>
Subject: Re: Pruitt oath

And maybe the I.D., set up email. Wld be nice to clear that off.

Sent from my iPhone

> On Feb 13, 2017, at 8:18 PM, Schnare, David <schnare.david@epa.gov> wrote:
>
> Will be at 2 pm Friday. Jackson will talk to Pruitt tonight to see if he wants to do anything on Friday. I suggested we do PSD and an informal discussion of the major issues list. We then do day one on Tuesday.
>
> dschnare
>
> Sent from my iPhone

To: john.k.mashburn [EOP/Ex. 6] Benton,
Donald[benton.donald@epa.gov]
From: Schnare, David
Sent: Mon 3/6/2017 5:49:29 PM
Subject: EPA Action Plan report

The following have been accomplished:

8	Jan 20	Issue directive complying with EO (or granting petition) to re-open the WOTUS Rule	3-3
14	Jan 20	Directive: Suspend Clinical Research Program	3-3
25	Jan 27	Issue Administrative Stay of WOTUS rule and guidance	3-3
29	Jan 27	Re-open review of CAFÉ standards and announce intention to grant petition to revoke California waiver	FR Notice drafted and awaiting authority to file.

The Administrator has never been briefed on the Transition Team's Action Plan. He has no knowledge on the Change initiatives.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Schnare, David[schnare.david@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]
From: Benton, Donald
Sent: Wed 2/22/2017 7:17:06 PM
Subject: FW: Request for Agency Agreement to Mediation/Settlement Discussions in City of Taunton v. EPA (1st Cir. 16-2280)
Taunton Est Group ltr to Pruitt 2-9-17.pdf

Fyi-legal request

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: John Hall [mailto:jhall@hall-associates.com]
Sent: Wednesday, February 22, 2017 11:38 AM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>; Benton, Donald <benton.donald@epa.gov>; Schnare, David <schnare.david@epa.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>; Kaplan, David (ENRD) <David.Kaplan@usdoj.gov>; thoye@taunton-ma.gov; Daniel de Abreu <ddeabreu@taunton-ma.gov>
Subject: Request for Agency Agreement to Mediation/Settlement Discussions in City of Taunton v. EPA (1st Cir. 16-2280)
Importance: High

Dear Administrator Pruitt:

Congratulations on your confirmation as the new Trump Administration head of EPA. Your arrival could not have come at a more opportune time for the City of Taunton, Massachusetts.

The City of Taunton is requesting that their permit challenge pending before the 1st Circuit be put in abeyance, to allow settlement discussion of the issues with your staff to occur. As noted in the attached correspondence from the Taunton Estuary Municipal Coalition, EPA's permitting action grossly conflicted with the accepted, peer reviewed scientific methods for evaluating nutrient effects and failed to follow the "rule of law". In particular, the extreme nitrogen reduction mandate and other limits imposed on this economically depressed city were a result of an environmental agenda to regulate more restrictively, regardless of the facts.

We are confident that a frank discussion of the events that transpired and a fair review of the science and regulatory requirements applicable to such cases, would result in an agreement that this permit action needs to be withdrawn and reconsidered. If your Office would inform the Justice Department and the City that the Agency is agreeable to putting the matter in abeyance, pending settlement discussions(e.g., alternative dispute resolution), the appropriate motion could be filed with the 1st Circuit. Such action would allow the City's limited resources to be directed at a productive resolution of the matter.

The City of Taunton looks forward to your Office's response. Thank you for your consideration of this request.

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

Taunton Estuary Municipal Coalition

February 9, 2017

Via Email and First Class US Mail

Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Request for Peer Review of EPA Region 1's Unprecedented Use of the Sentinel Method to Impose Stringent Nitrogen Limitations

Dear Administrator Pruitt:

On behalf of the major cities discharging to the Taunton Estuary (Taunton and Fall River) and New Bedford, I am submitting this letter requesting your intervention and review of a series of unprecedented and scientifically indefensible regulatory decisions made by EPA Region 1 an attempt to impose extremely stringent nitrogen limitations on our facilities. These NPDES permit actions represent quintessential examples of decision making based on EPA policy rather than sound science and environmental need. If left in place, these new mandates will impose well over \$100 million in new wastewater and stormwater compliance costs for our cities. Given the new administration's desire to eliminate wasteful regulation, we are hoping to obtain your assistance in staying further permit appeal proceedings and objectively reviewing the scientific concerns we had raised previously, which were all disregarded by the prior administration. The following provides some brief background on the matter.

In 2015, EPA finalized a permit imposing "state of the art" nitrogen limitations on Taunton's wastewater treatment facility after a protracted dispute regarding the need for such limitations. EPA issued a similar permit for Brockton in January, 2017, and intends similar mandates for New Bedford and Fall River, but due to ongoing appeals has not finalized those actions. EPA Region I imposed the stringent nutrient limitations even though:

1. The Taunton Estuary is not identified as nutrient impaired;

2. Three nationally recognized experts (including Dr. Steven Chapra, Tufts University of international renown) stated that EPA's novel calculation procedure (known as the "Sentinel Method") was not scientifically defensible and would clearly give an erroneous result;
3. System data, collected by Dr. Brian Howes in 2004-2006, confirmed that the stringent nitrogen limitations would not materially improve dissolved oxygen levels (the stated concern of EPA's nutrient reduction mandate), and;
4. EPA's analysis ignored all of the other system improvements occurring since 2004 that EPA itself had mandated to improve water quality in the system (including the closure of major power plants, reduction of combined sewer overflows and nutrient discharges by major Rhode Island facilities).

Individually, each of these errors should have warranted a remand of the permit. Even EPA Headquarters had confirmed, under FOIA, that the Region's novel procedure for claiming stringent nutrient limits were required was never peer reviewed or determined by anyone to be scientifically defensible. (Attachment 1) Nonetheless, EPA Headquarters refused a request from the *Center for Regulatory Reasonableness* to peer review the new method (in derogation of the federal Peer Review Handbook). (Attachment 2) EPA's Environmental Appeal Board (EAB) rejected all technical arguments and actively prevented consideration of the reports from independent experts confirming the Region's approach was technically baseless (See, Attachment 3, Letter of Dr. Brian Howes, Dartmouth- SMAST, who confirmed EPA was misapplying his data in reaching its conclusions). Left with little other choice, the City of Taunton appealed the EAB's decision to the First Circuit Court of Appeal (*see City of Taunton v. EPA*, (1st Cir. 16-2280)) and filed a permit modification request with EPA Region 1 to properly consider the information the EAB refused to assess in supporting EPA's permit action. Those actions are presently pending.

Requested Action

The cities believe that all permitting and appeal actions should be stayed, pending a complete scientific review of the Region's actions. An independent peer review of EPA's untested "Sentinel Method" should occur, as required by the federal Peer Review Policy, given the enormous local resources at stake. It is our belief that no group of credible scientists would possibly find this approach to be "scientifically defensible" which is why the prior administration refused to allow such review. In any event, should such review determine the Region's actions are, in fact, scientifically defensible and accurately reflect the impact of nitrogen on the DO regime of the Taunton Estuary, we would be willing to live with that result, knowing our monies will be well spent.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Th. Hoyer Jr.", written in dark ink.

Thomas C. Hoyer Jr

Mayor

Enclosures

cc. David Schnare, USEPA
Don Benton, USEPA
Mayor Correia, Fall River
Mayor Mitchell, New Bedford

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Benton, Donald
Sent: Tue 2/14/2017 3:50:54 PM
Subject: FW: Request for EPA Agreement to Alternative Dispute Resolution - City of Taunton v. EPA
Taunton Est Group ltr to Pruitt 2-9-17.pdf
Att 1 - EPA FOIA Reply on Sentinel Method - 12-24-2014.pdf
Att 2 - EPA Response to CCR Letter RE Renewed Request for SAB Review - Response dated - 1-22-16.pdf
Att 3 - Howes Letter on Taunton River 5-1-15.pdf
Att 1a contd EPA-HQ-2015-000462 - Sentinel Method Follow-up Reply (1-6-2015).pdf

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: John Hall [mailto:jhall@hall-associates.com]
Sent: Monday, February 13, 2017 1:43 PM
To: Benton, Donald <benton.donald@epa.gov>; Schnare, David <schnare.david@epa.gov>; 'scott.pruitt@oag.ok.gov'
Cc: Personal Email/Ex. 6 Michelle Connell; Personal Email/Ex. 6 Samantha Dravis; Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>; Mayor Jon Mitchell <jon.mitchell@newbedford-ma.gov>; thoye@taunton-ma.gov; Mayor@fallriverma.org
Subject: RE: Request for EPA Agreement to Alternative Dispute Resolution - City of Taunton v. EPA
Importance: High

Dear Administrator Pruitt:

Attached please find a letter from the Taunton Estuary Municipal Coalition requesting that the Agency reconsider, under the alternative dispute resolution process and independent peer review, the need for the stringent “state of the art” nitrogen limitations that EPA Region I has imposed on the City of Taunton (and is planning to further impose on other nearby communities). (Attachments). In October 2016, the City of Taunton was forced to file a Circuit Court appeal regarding the stringent nitrogen limitations, as well as other limitations that the City contends were beyond EPA’s statutory authority (e.g., flow limits). That permit appeal action is presently pending before the 1st Circuit Court of Appeals. As explained in the attached letter from the Municipal Coalition, EPA’s action ignored the finding of three nationally recognized experts who all uniformly concluded that the agency’s “technical” approach (sentinel method) used to create the stringent nitrogen limitations was fundamentally flawed and would not result in meaningful ecological improvement in the Taunton Estuary. EPA Headquarters also refused to conduct a “peer review” of the Region’s unproven sentinel method (Attachment 2) , even after acknowledging, under FOIA, that it possessed no records showing that the new methodology used to set the limits was scientifically defensible (Attachment 1 and 1a) and the lead researcher for the Taunton Estuary informed the Region that his data were being misapplied in deriving the stringent limits. (Attachment 3).

The City of Taunton and the Municipal Coalition believe this is precisely the type of arbitrary regulatory action that the Trump Administration has committed to address to avoid wasting local resources. Regarding the ongoing litigation, in December 2016, EPA informed the 1st Circuit Mediation official - Hon. Patrick J. King (ret.), that EPA would not participate in any form of alternative dispute resolution. *It would be greatly appreciated if you would inform the City whether the new Administration would reconsider that position.* If so, appropriate filings with the 1st Circuit could occur to place the case in abeyance, pending such dispute resolution discussions.

The Municipal Coalition (and Center for Regulatory Reasonableness) would also look forward to participating in an independent peer review that could evaluate the reasonableness of using Region I’s unproven methodology in future permit actions. If such an independent peer review confirms that the Region’s novel approach, as applied, is scientifically defensible, the communities would support further nutrient reduction expenditures, knowing that those resources are well spent.

Thank you for your consideration of these requests.

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

December 24, 2014

Alexander J.E. English
Hall & Associates
1620 I St., NW
Washington, DC 20006-4033

OFFICE OF
WATER

RE: Freedom of Information Act Request EPA-HQ-2015-000462

Dear Mr. English:

This letter responds to your October 14, 2014, request under the Freedom of Information Act (FOIA) for documents pertaining to use of the "sentinel site method" in EPA Region 1. As explained below, the Agency does not have records that are responsive to your request.

1. *"The public notice in the federal register regarding the agency's intended use of the Sentinel Site Method for the purposes of selecting nutrient criteria and/or meeting dissolved oxygen criteria in estuarine waters."*

Records in support of individual permitting decisions (e.g., the draft NPDES permit and fact sheets for the Taunton, Massachusetts wastewater treatment facility), are not published in the Federal Register; thus, there are no records responsive to this request.

2. *"Any Science Advisory Board review of this method (as applied by EPA Region 1) finding it scientifically defensible."*

The Science Advisory Board (SAB) has not reviewed the permit administrative records for NPDES permits developed for facilities discharging to the Taunton River Estuary; thus, there are no records responsive to this request.

3. *"Any documentation confirming that EPA has previously peer-reviewed the "sentinel approach" as proposed for use in Region 1."*

There are no records responsive to this request.

4. *Any correspondence sent from EPA HQ to the agency's Regional offices stating that the "sentinel approach" was scientifically defensible and an acceptable means for generating numeric nutrient criteria and/or establishing numeric nutrient limits under 40 CFR 122.44(d).*

There are no records responsive to this request.

Sincerely,

Deborah G. Nagle, Director
Water Permits Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

January 6, 2015

Alexander J.E. English
Hall & Associates
1620 I St., NW
Washington, DC 20006-4033

OFFICE OF
WATER

RE: Freedom of Information Act Request EPA-HQ-2015-000462

Dear Mr. English:

This letter responds to the clarification you sent by email on January 5, 2014, in reply to our December 23, 2014, response to the above-named Freedom of Information Act (FOIA) request. Your FOIA request sought documents pertaining to use of the "sentinel site method" in EPA Region 1. You clarified that items 1 and 2 in that request were intended to address the "sentinel" method itself, rather than any individual permitting decisions.

Our response to your clarified request on items 1 and 2 is as follows:

1. ***"The public notice in the federal register regarding the agency's intended use of the Sentinel Site Method for the purposes of selecting nutrient criteria and/or meeting dissolved oxygen criteria in estuarine waters."***

There are no records that are responsive to your request.

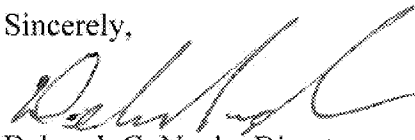
2. ***"Any Science Advisory Board review of this method (as applied by EPA Region 1) finding it scientifically defensible."***

There are no records that are responsive to your request.

The cost of providing this information is \$24.25. An itemized invoice covering the charges for processing your request is enclosed. Please forward your check or money order, made payable to the U. S. Environmental Protection Agency, within 30 days of the date of this response. Your check should refer to the FOIA Tracking number above and should be accompanied by the top portion of the enclosed Bill for Collection. Your prompt payment of the amount indicated will be appreciated. In a continued effort to streamline the FOIA process, EPA is now offering you the option of paying your FOIA bill on-line. There is no requirement for you to use the on-line system to pay your bill, but if you choose to do so please go to www.pay.gov and follow the simple instructions. Please be sure to have your FOIA tracking number available so that the payment can be applied to the correct charge.

You may appeal this no records response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Sincerely,



Deborah G. Nagle, Director
Water Permits Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

1/22/2016

Christopher L. Risetto, General Counsel
Center for Regulatory Reasonableness
1620 I Street, N.W., Suite 701
Washington, DC 20006

OFFICE OF
WATER

RE: Renewed request for SAB Review

Dear Mr. Risetto:

I am writing in response to your December 1, 2015, letter to Environmental Protection Agency (EPA) Administrator Gina McCarthy and Science Advisory Board (SAB) Director Christopher Zarba, requesting peer review of EPA Region 1's method of deriving water quality-based effluent limitations in the Massachusetts Taunton River watershed.

In response to your similar request in an October 2, 2014, letter, we responded on January 16, 2015, informing you that we had decided against seeking peer review. Your December 2015 correspondence attached a letter from Dr. Brian Howes, a professor at the School for Marine Science and Technology at the University of Massachusetts/Dartmouth, that commented on Region 1's use of a particular "sentinel station" to develop nutrient targets for the Taunton River watershed. We do not see any information in Dr. Howes's letter that causes us to reconsider our response to your 2014 letter. We do not consider Region 1's permit-specific technical approach to constitute a new scientific methodology, nor is peer review of such approaches "required by federal law and guidance." Accordingly, we do not intend to seek peer review of the technical approach Region 1 used to develop permit limits in the Taunton River watershed.

We continue to support Region 1's use of the best available information to interpret the state's narrative water quality criteria for nutrients and apply it to develop appropriate numeric effluent limitations. The information contained in the permit fact sheet provides ample documentation that the regulatory "reasonable potential" test in 40 CFR 122.44(d)(1)(i) has been met (i.e., permit limits must be developed to control any pollutant that is or may be discharged at a level "which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including State narrative criteria for water quality"). Having determined that reasonable potential existed, the Region used an appropriate technical approach, documented in the administrative record, to develop numeric targets for the discharging facilities.

Additionally, the Taunton permit is currently under appeal to the Environmental Appeals Board (EAB). That forum, under the provisions of 40 CFR 124.19, is the appropriate place to resolve

your questions about the technical and administrative basis for the challenged Taunton River watershed permits.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Beauvais". The signature is fluid and cursive, with a large initial "J" and "B".

Joel Beauvais
Deputy Assistant Administrator

cc: Christopher Zarba, SAB
Curt Spalding, EPA Region 1



School for Marine Science and Technology

706 South Rodney French Blvd., New Bedford, MA 02744

Office 508-999-8193 Fax 508-999-8197

May 1, 2015

VIA E-MAIL

Mr. Joe Federico
Beta Engineering Inc.
6 Blackstone Valley Place
Suite 101
Lincoln, RI 02865

RE: Use of Sentinel Site Approach Based on Massachusetts Estuary Project Data for Setting Nutrient Objectives for the Taunton Estuary

Dear Mr. Federico:

I understand that the City of Taunton and other communities tributary to Mount Hope Bay are interested in undertaking a detailed analysis of existing studies and system requirements with the objective of creating a scientifically defensible approach to setting nutrient reduction requirements for the Taunton Estuary and eventually, Mount Hope Bay (MHB). That action is to be applauded and is, in my opinion, long overdue. This letter responds to your recent inquiries regarding the sentinel site approach used by EPA in setting nutrient objectives for the Taunton Estuary based on data that I collected in 2004-2006 for that system that was to support a future Massachusetts Estuary Project (MEP) nitrogen threshold assessment.

The purpose of that data collection was to allow the MEP process to be initiated, to allow water quality model verification and to allow for an empirical evaluation of how nutrients are currently impacting various areas of the Mount Hope Bay-Taunton River system. However, as is clear from our report, additional studies and detailed consideration of the system hydrodynamics and the major factors affecting differing algal/DO responses and key habitats (eelgrass, benthic animals) are necessary *before* one could make these determinations and select a defensible "sentinel station" to represent the nutrient management target for the system. That has yet to occur.

Regarding the selection of MHB16 as the "sentinel station" for the Taunton River estuarine reaches, the existing data and studies for the system would not support its use as a valid sentinel site, particularly as relates to the MEP program. First, the site does not appear to have any obvious relevance for predicting nutrient effects in the Taunton Estuary as it is far removed, has a large intervening basin (Mt. Hope Bay) with multiple inputs and differing structure, and is subject to far different stressors and physical constraints. Second, MHB16 was confirmed by other researchers to exhibit very different

hydrodynamic characteristics from the rest of the system, including Mount Hope Bay itself (See attached figures (Kincaid, 2006); see, also hydrodynamic analyses (Zhao, Chen & Cowles, 2006; Chen, Zhao, Cowles & Rothschild, 2008)). Also, this site in the Sakonnet River is not the dominant discharge channel from Mt. Hope Bay adding an additional confounding element. Consequently, the nutrient response at this site would not be representative of the expected response within the Taunton River estuarine reaches.

Thus, while, in my opinion, a sentinel station approach is valid for management of nutrient impacts, there are multiple factors that need to be taken into account before implementing this approach and selecting the location. Mount Hope Bay is a complex system with its own major inputs of which the Taunton River is but one (a big one certainly) as well exchanges with Narragansett Bay. Stratification is a major factor that broadly affects DO conditions throughout this system and that needs to be evaluated more thoroughly to understand the DO regime.

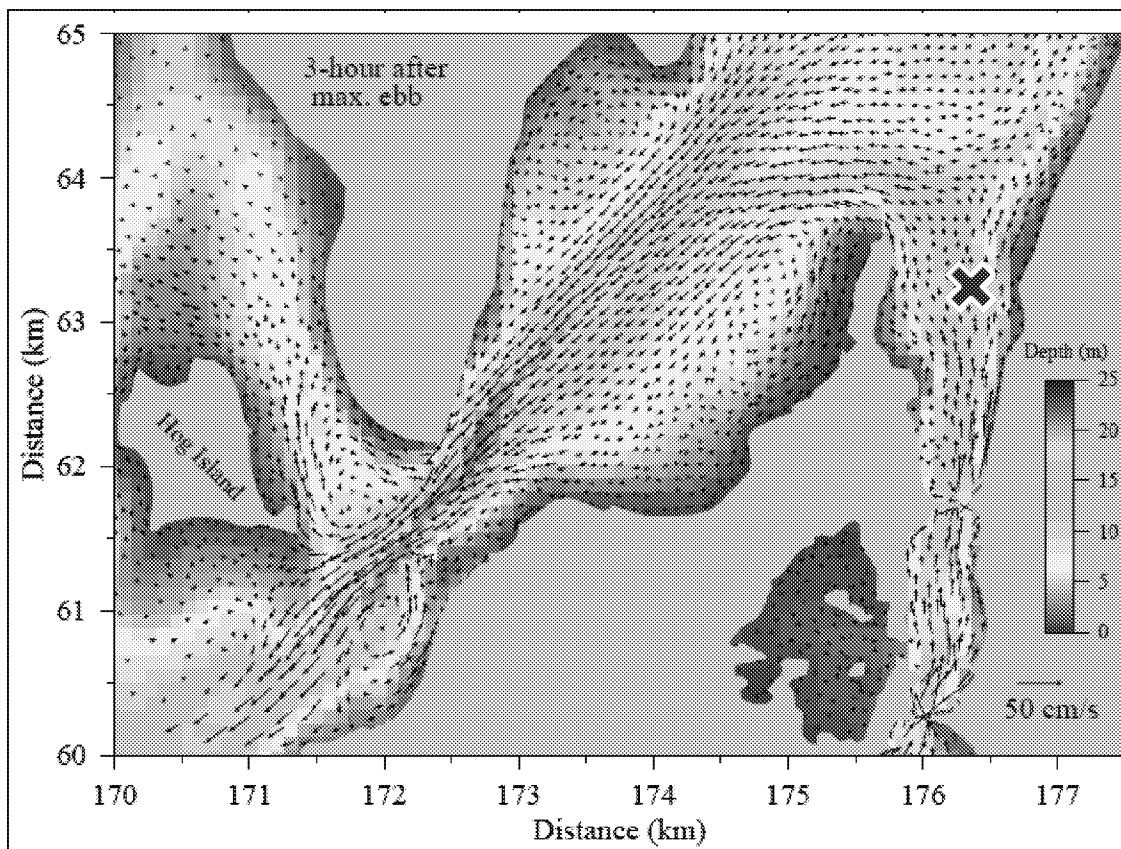
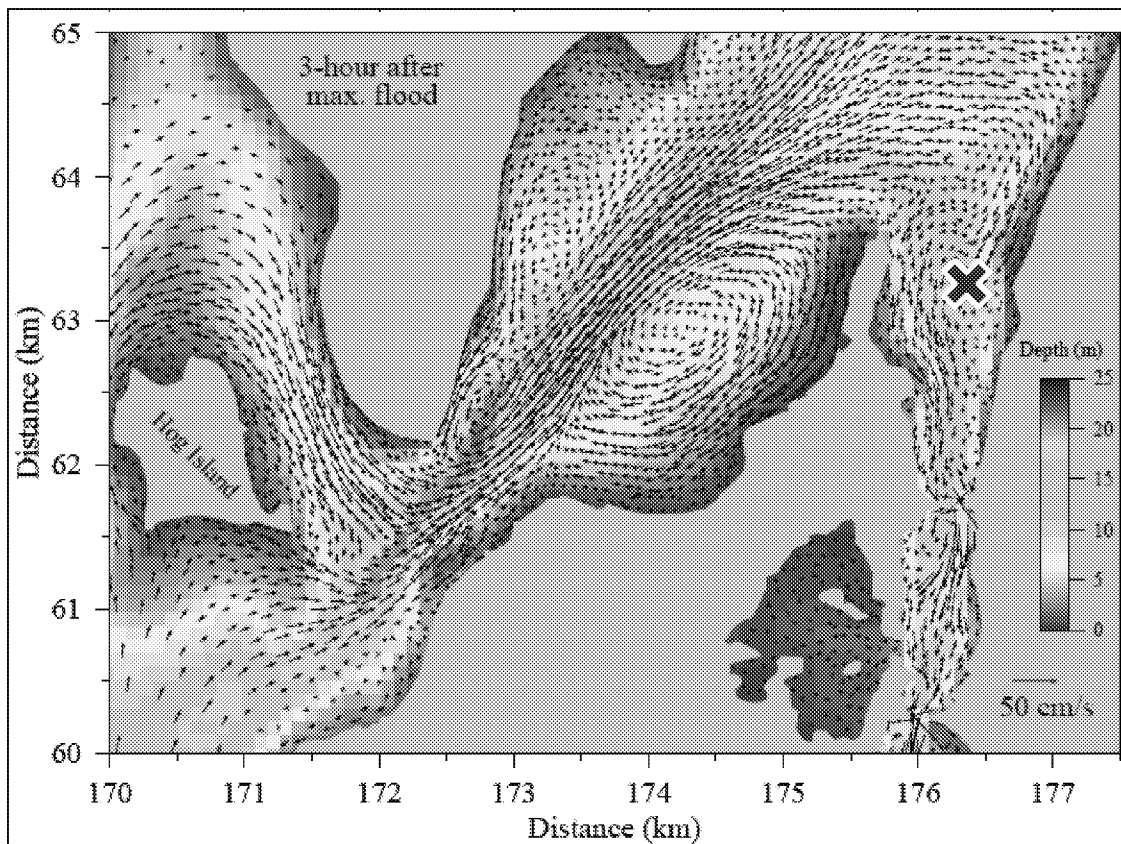
I hope that you may find these comments helpful. We look forward to helping Taunton, Brockton and other affected communities to resolve these complex issues. Let me know if I may be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. L. Howes', with a long horizontal flourish extending to the right.

Brian L. Howes, Ph.D.
Professor, SMAST-UMass Dartmouth
Technical Director Massachusetts Estuaries Project

Attachment



Taunton Estuary Municipal Coalition

February 9, 2017

Via Email and First Class US Mail

Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Request for Peer Review of EPA Region 1's Unprecedented Use of the Sentinel Method to Impose Stringent Nitrogen Limitations

Dear Administrator Pruitt:

On behalf of the major cities discharging to the Taunton Estuary (Taunton and Fall River) and New Bedford, I am submitting this letter requesting your intervention and review of a series of unprecedented and scientifically indefensible regulatory decisions made by EPA Region 1 an attempt to impose extremely stringent nitrogen limitations on our facilities. These NPDES permit actions represent quintessential examples of decision making based on EPA policy rather than sound science and environmental need. If left in place, these new mandates will impose well over \$100 million in new wastewater and stormwater compliance costs for our cities. Given the new administration's desire to eliminate wasteful regulation, we are hoping to obtain your assistance in staying further permit appeal proceedings and objectively reviewing the scientific concerns we had raised previously, which were all disregarded by the prior administration. The following provides some brief background on the matter.

In 2015, EPA finalized a permit imposing "state of the art" nitrogen limitations on Taunton's wastewater treatment facility after a protracted dispute regarding the need for such limitations. EPA issued a similar permit for Brockton in January, 2017, and intends similar mandates for New Bedford and Fall River, but due to ongoing appeals has not finalized those actions. EPA Region I imposed the stringent nutrient limitations even though:

1. The Taunton Estuary is not identified as nutrient impaired;

2. Three nationally recognized experts (including Dr. Steven Chapra, Tufts University of international renown) stated that EPA's novel calculation procedure (known as the "Sentinel Method") was not scientifically defensible and would clearly give an erroneous result;
3. System data, collected by Dr. Brian Howes in 2004-2006, confirmed that the stringent nitrogen limitations would not materially improve dissolved oxygen levels (the stated concern of EPA's nutrient reduction mandate), and;
4. EPA's analysis ignored all of the other system improvements occurring since 2004 that EPA itself had mandated to improve water quality in the system (including the closure of major power plants, reduction of combined sewer overflows and nutrient discharges by major Rhode Island facilities).

Individually, each of these errors should have warranted a remand of the permit. Even EPA Headquarters had confirmed, under FOIA, that the Region's novel procedure for claiming stringent nutrient limits were required was never peer reviewed or determined by anyone to be scientifically defensible. (Attachment 1) Nonetheless, EPA Headquarters refused a request from the *Center for Regulatory Reasonableness* to peer review the new method (in derogation of the federal Peer Review Handbook). (Attachment 2) EPA's Environmental Appeal Board (EAB) rejected all technical arguments and actively prevented consideration of the reports from independent experts confirming the Region's approach was technically baseless (See, Attachment 3, Letter of Dr. Brian Howes, Dartmouth- SMAST, who confirmed EPA was misapplying his data in reaching its conclusions). Left with little other choice, the City of Taunton appealed the EAB's decision to the First Circuit Court of Appeal (*see City of Taunton v. EPA*, (1st Cir. 16-2280)) and filed a permit modification request with EPA Region 1 to properly consider the information the EAB refused to assess in supporting EPA's permit action. Those actions are presently pending.

Requested Action

The cities believe that all permitting and appeal actions should be stayed, pending a complete scientific review of the Region's actions. An independent peer review of EPA's untested "Sentinel Method" should occur, as required by the federal Peer Review Policy, given the enormous local resources at stake. It is our belief that no group of credible scientists would possibly find this approach to be "scientifically defensible" which is why the prior administration refused to allow such review. In any event, should such review determine the Region's actions are, in fact, scientifically defensible and accurately reflect the impact of nitrogen on the DO regime of the Taunton Estuary, we would be willing to live with that result, knowing our monies will be well spent.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Th. Hoyer Jr.", written in dark ink.

Thomas C. Hoyer Jr

Mayor

Enclosures

cc. David Schnare, USEPA
Don Benton, USEPA
Mayor Correia, Fall River
Mayor Mitchell, New Bedford

To: schnare.david@epa.com[schnare.david@epa.com];
ericksen.doug@epa.gov.[ericksen.doug@epa.gov.]; Munoz, Charles[munoz.charles@epa.gov];
john@epa.gov[john@epa.gov];

Ex. 6/Konkus Email

From: Benton, Donald

Sent: Fri 2/10/2017 5:11:23 PM

Subject: Pruitt confirmation

Please inform cabinet affairs that the confirmation vote looks like it will happen Thursday afternoon or evening next week. The cloture vote will occur Tuesday or Wednesday and unless Democrats waive rules, procedurally the soonest confirmation can occur is Thursday afternoon. VPOTUS is out of town Friday so it may involve the President. Ask cabinet affairs to inform us as to their plan.

We need talking points on all 7 potential EO issues ready for Scott on Monday morning so we have a short reprieve on being due tomorrow.

Please inform water, security, etc we will not be doing our advance to the bay on Monday, likely Wednesday for his official trip there on the following Tuesday.

Any questions please call. Please be sure to close the loop with Loren Smith at DOT on Cafe and get our draft to Andrew Bromberg. Call with any questions.
Thanks, Don

Sent from my iPad

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Benton, Donald
Sent: Fri 2/24/2017 3:52:10 PM
Subject: FW: Letter from OH AG to Administrator Pruitt re Eramet and ferroalloy NESHAP
2220644 1.pdf

Fyi, job loss claim by Eramet Industries.

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Theresa Pugh [mailto:theresapughconsulting@gmail.com]
Sent: Wednesday, February 22, 2017 2:37 PM
To: Schnare, David <schnare.david@epa.gov>; Kreutzer, David <kreutzer.david@epa.gov>; Sugiyama, George <sugiyama.george@epa.gov>; Benton, Donald <benton.donald@epa.gov>
Cc: john.willoughby@erametgroup.com; Nick Pyle <nick@dcplye.com>; Laure Guillot <laure.guillot@erametgroup.com>
Subject: Letter from OH AG to Administrator Pruitt re Eramet and ferroalloy NESHAP

Dear Mrrs. Benton, Schnare, Sugiyama and Kreutzer:

Today I received this letter from Ohio Attorney General Mike DeWine to Administrator Pruitt. Eramet asked that I convey it to you.

On behalf of Eramet, we thank you for your consideration of the complexities associated with compliance with this NESHAP -- primarily due to the flawed camera (with false positives) that would drive up compliance costs. It is expected that the use of this flawed camera would be the largest driver for layoffs.

Please see AG DeWine's attached letter.

The NESHAP compliance date requires communication to employees if layoffs are eminent. Thus Eramet hopes to

have a meeting with appropriate EPA staff at your earliest possibility. Eramet respects that you have many other issues to evaluate. But for a company with less than 200 employees, a layoff of up to 90 in Ohio is severe. Eramet hopes for a review of the regulation. It is not completely clear if the rule was intended to be covered by the Priebus memo given when it was issued. Even if covered by the delay, that delay date buys little time before layoff notices would have to be given under contract terms in March.

Please see attachment. My telephone number is 703-507-6843.

Thank you for your consideration.

Theresa Pugh

Thank you,
Theresa

Theresa Pugh Consulting, LLC
-a woman-owned small business
703-507-6843 Office

2313 North Tracy Street
Alexandria, Virginia 22311
www.theresapughconsulting.com

Sent from mobile device - please excuse autotext error or typo

February 22, 2017

Scott Pruitt
Administrator
Environmental Protection Agency
Office of the Administrator
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

**RE: National Emission Standards for Hazardous Air Pollutants: Ferroalloys Production
80 Fed. Reg. 37,366 (June 30, 2015) and 82 Fed. Reg. 5401 (Jan. 18, 2017)**

Dear Administrator Pruitt:

As the chief law officer for the State of Ohio, I ask you to employ all available measures to ensure that a U.S. EPA rulemaking does not cripple our country's ferroalloys industry. Eramet Marietta, Inc., located in Marietta, Ohio and Felman Production, LLC, located in Letart, West Virginia, are the only two remaining producers of manganese ferroalloys for the steel industry in the United States. These companies face intense competition from foreign producers, and the National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production only compound these concerns. 80 Fed. Reg. 37,366 (June 30, 2015) and 82 Fed. Reg. 5401 (Jan. 18, 2017) (on reconsideration). There is no doubt that protecting the public health from hazardous air pollution is critical, but a proper balance should be struck to prevent job losses, let alone the risk of closure to local businesses. Eramet will need to reduce its production and staff by half to comply with the overburdening rulemaking. We ask for your assistance to avoid these losses.

The Ohio company, Eramet, predicts it will eliminate 90 jobs due to this rulemaking. The Company, however, is committed to reconstructing the largest unit of its operation for the sake of environmental compliance. By taking this measure to comply, the Company will save half of its staff and production. Unfortunately, Eramet does not have the resources to update the remaining operational units, so it predicts that the rulemaking will eliminate nearly 90 jobs and the other half of its production. Eramet may never fully recover. The effect of such a loss will extend beyond Eramet and the ferroalloys industry as that industry supports major U.S. steel companies including U.S. Steel, AK Steel, TimkenSteel, and ArcelorMittal. American steel is vital to our national security, and many of these companies have ties to Ohio and our local economy. Without Eramet's supply, these steel companies will encounter unpredictable costs and their own production risks. Simply put, the harms introduced by this rulemaking are severe and far-reaching.

Eramet and Felman expressed their concerns with the rulemaking at various stages of the public comment process. In 2015, the Agency through its Acting Administrator responded to a letter from Senators Capito, Manchin, Portman, and Brown, and Representatives McKinley, Johnson, Jenkins, and Mooney. In its response, U.S. EPA declined to designate the rulemaking as a “major rule” for purposes of the Congressional Review Act. At that time, the companies also raised concerns with the two -year deadline to achieve full compliance as it was not sufficient time to make the necessary improvements to their operations. The former administration, in the same written response, pledged to consider an extension but never approved one.

Eramet even challenged the 2015 final rule in the D.C. Circuit Court of Appeals. *Eramet Marietta, Inc. v. EPA*, Case No. 15-1296. That appeal is currently stayed after Eramet petitioned U.S. EPA to reconsider the 2015 rule, and the former administration agreed to reevaluate a few provisions. Upon reconsideration, U.S. EPA withdrew its demand that Felman install a new monitoring system, but the final reconsideration rule, published January 18, 2017, imposes all of the other onerous requirements. Significantly, the former administration finalized this rulemaking less than two full days before the official change in the administration. Now that the reconsideration is final, the stay for Eramet’s challenge before the D.C. Circuit may be lifted by the parties.

The companies were not the only stakeholders to participate in the public comment process. In 2014, the State of Ohio through its environmental protection agency addressed the rulemaking’s projected capital costs, \$25 million for Eramet and \$12.4 million for Felman. The comment letter alerted the former administration to the true risk of plant closure at the hands of this burdensome regulation and foreign competition.

Again in 2016 for the reconsideration of the rulemaking, Ohio EPA exposed the unnecessary expenses associated with quarterly emissions testing and digital -camera monitoring. The monitoring demands, in particular, are troubling because U.S. EPA replaced its tried -and-true method with a more expensive and unproven method. It is unusual and problematic for U.S. EPA to impose any requirement without proper scrutiny. The new method’s uncertainties cast doubt as to whether the companies will ultimately achieve environmental compliance, which in turn, discourages the investments necessary to upgrade all of the operational units. To date, there is only one supplier of the digital -camera-monitoring technology, which invites an array of concerns from pricing to quality control. Ohio EPA warned that these requirements may increase operating costs in the highly competitive ferroalloys market without any benefits to the environment or the public health.

The former administration sidestepped these comments and proceeded with a rulemaking that jeopardizes not only the survival of Ohio and West Virginia companies but an American industry and potentially our national security in the ability to make steel in the United States from U.S. manufacturers. We should not accept the conclusion that protecting the public health on the one hand and ferroalloy jobs on the other are mutually exclusive. I ask you to take necessary action to prevent this loss.

We appreciate your consideration and prompt attention to this critical matter, and look forward to working with you.

Very respectfully yours,

A handwritten signature in dark ink, appearing to read "Mike DeWine". The signature is fluid and cursive, with the first name "Mike" and last name "DeWine" clearly distinguishable.

Mike DeWine
Ohio Attorney General

From: Benton, Donald
Location: WJC-N 3412
Importance: Normal
Subject: Trump Administration Team
Categories: EZ Record - Shared
Start Date/Time: Tue 2/28/2017 9:00:00 PM
End Date/Time: Tue 2/28/2017 10:00:00 PM
Untitled

Since we are all being integrated into the agency in our respective roles, there is no need to continue our group meetings. Each of you will be meeting with your respective department and office heads in your own meetings. As Presidential Appointees, Charles and I will continue to be available to you individually if you need my assistance in any matter.

I cannot say enough about the fantastic job you have all done here over the last 6 weeks. I will remember it as one of the best team experiences I have had in my life. I know that you will move forward and continue to do your part to Make America Great Again and to make President Trump and Administrator Pruitt wildly successful in their roles.

Thank you for Everything,
Don

To: Benton, Donald[benton.donald@epa.gov]; Schnare, David[schnare.david@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]; Sugiyama, George[sugiyama.george@epa.gov]; Bangerter, Layne[bangerter.layne@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]; Ericksen, Doug[ericksen.doug@epa.gov]; Konkus, John[konkus.john@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
From: Benton, Donald
Sent: Thur 3/2/2017 2:14:45 PM
Subject: Trump Administration Team

To: David Schnare [David Schnare Personal Email/Ex. 6]
From: Ericksen, Doug
Sent: Thur 3/16/2017 2:06:40 PM
Subject: Ericksen

David,

I saw your letter of resignation today.

What an amazing loss it is for the administration and for the effort to get things done here. You were the person with the knowledge and expertise that we need to actually get the job done.

If you are going to try to crack open the bank vault, it is good to have someone who actually knows something about bank vaults.

I do not know how you will be able to be replaced.

I enjoyed working with you.

I wish you all of the best. Please look me up when you are out around the Lynden area. My personal contact information is listed below.

Doug Ericksen

[Personal Phone/Ex. 6]

[Personal Email/Ex. 6]

[Personal Address/Ex. 6]

Personal Address/Ex. 6

To: Schnare, David[schnare.david@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]; Sugiyama, George[sugiyama.george@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]
From: Ericksen, Doug
Sent: Wed 3/15/2017 5:28:44 PM
Subject: Benton letter

I have the Benton letter in my office in 3312. Stop to sign and I will also try to track you guys down.

Ericksen

To: Schnare, David[schnare.david@epa.gov]
From: Ericksen, Doug
Sent: Mon 3/13/2017 1:27:24 PM
Subject: Ericksen

David,

I am in the building today. You have a few minutes to catch up on a few items?

Ericksen

To: Schnare, David[schnare.david@epa.gov]
From: Ericksen, Doug
Sent: Tue 3/14/2017 3:54:43 PM
Subject: RE: Non-EPA response team

CNBC interview.

ericksen

From: Schnare, David
Sent: Tuesday, March 14, 2017 11:54 AM
To: Ericksen, Doug <ericksen.doug@epa.gov>
Cc: Kreutzer, David <kreutzer.david@epa.gov>
Subject: Re: Non-EPA response team

Why ? Pruitt has not taken ownership of the issue as best I can tell. Or do you know something I don't?

d

Sent from my iPhone

On Mar 14, 2017, at 11:52 AM, Ericksen, Doug <ericksen.doug@epa.gov> wrote:

David and David,

As you time allows I would like to sit down with you to put together a list of scientists and professionals who can provide balance to the climate change CO2 conversation.

We can discuss more in person.

Doug Ericksen

To: Schnare, David[schnare.david@epa.gov]
From: Ericksen, Doug
Sent: Tue 3/14/2017 3:54:08 PM
Subject: RE: Letter for Don Benton

True point.

ericksen

From: Schnare, David
Sent: Tuesday, March 14, 2017 11:52 AM
To: Ericksen, Doug <ericksen.doug@epa.gov>
Subject: Re: Letter for Don Benton

Would be nice to show Don and me as the leadership team, since that was the reality.
Nevertheless , I'll sign it.

d

Sent from my iPhone

On Mar 14, 2017, at 11:20 AM, Ericksen, Doug <ericksen.doug@epa.gov> wrote:

I have put together the following letter for Don Benton to President Trump. I am emailing to see if the members of the Beach Head team would sign on.

Please get back to me.

Doug

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

To: Schnare, David[schnare.david@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]
From: Ericksen, Doug
Sent: Tue 3/14/2017 3:52:24 PM
Subject: Non-EPA response team

David and David,

As your time allows I would like to sit down with you to put together a list of scientists and professionals who can provide balance to the climate change CO2 conversation.

We can discuss more in person.

Doug Ericksen

To: Valentine, Julia[Valentine.Julia@epa.gov]
Cc: Pruitt, Scott[Pruitt.Scott@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]; Schnare, David[schnare.david@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]; Ericksen, Doug[ericksen.doug@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Benton, Donald[benton.donald@epa.gov]
From: Whitt Sessoms
Sent: Thur 3/30/2017 3:24:13 PM
Subject: Clean Water Act and Meeting
[Adm. Pruitt letter.pdf](#)

Hi Julia,

Great talking with you this week and I sincerely appreciate your offer to connect me with the right people within the EPA to set up a meeting. As you may have gathered from our brief phone conversation, I am very excited about President Trumps vision with regards to the EPA and Administrator Pruitt with his vision and position with the agency. I would like to meet with the appropriate member(s) of the Presidents transition team that to the best of my ability have copied on this email. Also, I need to give you a little background on my purpose of the meeting.

First let me disclose to you that I am in the real estate development business in southeast Virginia and northeast North Carolina. I have developed many tracts of land requiring me to deal with wetland issues, beach dune issues, and many other facets of government oversight. I have been active specifically in Virginia Beach Va., Currituck County, N.C., and Dare County, N.C. In addition, relating to the purpose of my meeting request with the abovementioned EPA representatives, I would like for you to know I have served on several regulatory boards and commissions at the pleasure of the Va. Beach City Council and previous Governors of Virginia. In particular, I served on the:

1. Governor's Regulatory Reform Advisory Board
2. Beaches and Waterways Advisory Commission
3. Board on Conservation and Development of Public Beaches
4. Congressional Fishing Advisory Board
5. Virginia Marine Resources Commission

The abovementioned boards and commissions are responsible for:

1. Regulatory policy, rule and code making
2. Approving and crafting the required public hearing process for potential regulations, statutes and rules
3. Enacting and administering action for violations of various laws and statutes

4. Permit granting
5. Working with scientist to assist in crafting proposed legislation and to set standards in determining the success and failure of the program and initiative
6. Hearing violators of regulations and laws and meting the appropriate penalty

Again, relating to the proposed abovementioned meeting, in my business I have and continue to deal and interact with the following federal, state, and local regulatory agencies, government bodies, and authorities:

- 1.U.S. Environmental Protection Agency
2. Army Corp. of Engineers
3. U.S. Fish and Wildlife Service
4. U.S. State Department
5. National Marine Fisheries
6. North Carolina Department of Environmental Quality
7. Currituck County Planning
8. Dare County Planning
9. North Carolina Department of Transportation
10. Virginia Department of Transportation
11. Virginia Department of Environmental Quality
12. Virginia Institute of Marine Science
13. Virginia Marine Resources Commission
14. City of Virginia Beach Planning, Zoning, and Waterfront Operations
15. County of Mecklenburg Planning and Zoning
16. Surface Transportation Board
17. Economic Development Partnership of North Carolina

18. NCEast Alliance

19. Virginia Beach Economic Development

20. Virginia Port Authority

21. Nature Conservancy

So, as you can see, I have a tremendous amount experience dealing with local, state, and federal environmental, economic development, and other government issues pertaining to land and water bodies. I have to admit, of all of the agencies, departments, boards and commissions I have dealt with and/or served on, the one that appears to exert the greatest non sanctioned overreach enabled by lack of self-governance from within and further perpetuated by executive orders coupled with a systemic lack of public input from major stakeholders on rule, policy, and code making is the U.S. Environmental Protection Agency! By major stakeholders I mean individuals and entities that own significant tracts of land that are severely impacted by new and existing laws, policies, and codes of the Clean Water Act. The EPA has the wetland inventory at its fingertips that should be used as a database of those affected property owners who need to be contacted to give input to new laws and regulations that directly affect the value of their property. Use me as an example. I own and have owned several large parcels that have required me to deal with the ACOE/EPA. Also I have had direct business dealings with Fish and Wildlife to acquire my property with their consulting the EPA and I have not received any request or notification for public input from the EPA pertaining to a new rule, regulation, or law in the last twenty years nor has any notification been in a local newspaper or any other communication that reaches out to stakeholders. Please note my attached letter to Administrator Pruitt along with the attached summary from my environmental engineer substantiating certain issues I mention above.

I need to disclose an interaction I had with the ACOE pertaining to a field visit to a property of mine in Currituck County in North Carolina as it relates to the Clean Water Act and somewhat showcases my frustration. I had the property under contract that required a letter from the ACOE that they did not have jurisdiction over the tract. They were from the Wilmington office and we met on the property several years ago. It was a 40 acre farm that had been cultivated for the last 150 years and located on US 158 in Currituck County NC. The ACOE representatives on site initially stated the whole farm was under their jurisdiction because the drainage ditches drained into a two foot pipe under US 158 which then emptied into Currituck Sound. They stated that the ditches were "navigable" thus were "waters of the U.S." When I asked how the two foot wide ditches were navigable under the Clean Water Act, they stated because they would pass the "canoe test" meaning if you could float a canoe in the water in the ditch, then it was navigable! Of course after engaging several elected officials representing that area they talked sense into the ACOE and in the end I did not need a permit to develop the farmed area and I closed on the property. I also sold several tracts to the Fish and Wildlife and their employee went through with me the same process with regards to them buying our property to expand the Currituck National Wildlife Refuge. With all of my interaction with the ACOE

pertaining to Clean Water Act issues, and all of the above-mentioned boards and commissions I have served on and dealt with, I have never been notified or seen a notification in an official or unofficial capacity of an EPA act or proposed code, rule, or any other action.

After exhaustive "schooling" on the Clean Water Act from my own experience and tutoring by my environmental engineers, I have become very concerned with the over reach and inverse condemnation that the Act has become and created over time. Looking at the original intent of the act as being the protection of tidal wetlands, marshes, and bogs, it is now reclassifying many more types of land as wetlands that were not wetlands in the past based and this gross expansion is based on no scientific reason. The best example is "Flatwoods or Winter Wet Woods" defined by the EPA as wet for "extended periods". These woods and forests are traditional woods or forests with traditional vegetation and leaves covering the earth. Sometimes after a rain event, puddling occurs in small areas as it does everywhere that is flat. This commonplace occurrence now creates a "wetland" under the jurisdiction of the EPA/ACOE that was not a wetland previously. Note the following link....

<https://books.google.com/books?id=ZBQNDgAAQBAJ&pg=PA422&lpg=PA422&dq=winter+wet+woods&source=bl&btnG=Google%20Books> which is a book titled: Wetland Indicators a Guide to Wetland Formation, Identification, Delineation, Classification, and Mapping. Page 428 states: "Complex landscapes pockmarked with small wetlands and small drylands make it practically impossible to separate wetlands from drylands." This in fact categorizes 90% of the land in southeast Virginia and northeast North Carolina. This coupled with the recent inclusion of loblolly pine trees as an indicator of wetlands goes past reasonability. Pines are found all over the entire states of Virginia and North Carolina.....tidewater, piedmont, and mountainous regions To make it even more frustrating, Loblolly pines cannot even physically grow in traditional wetland areas. This further deems non wetland areas as wetlands. . To make this even more interesting, I have an application in at the Norfolk office of the ACOE for a site visit to a property I own in the middle of Virginia Beach on the fringe of the Resort Area District. The city wants to buy this tract and it would be for a use that would generate numerous jobs and be a big help to our resort trade that generates \$1.4 billion dollars to the city economy. The city wants a letter from the ACOE stating they do not have jurisdiction over the parcel which is an elevated wooded forest with a stand of 100 year old pines that is dry with simply a leaf matting covering the ground. This is how skittish buyers of any property in the tidewater areas of North Carolina and Virginia have become because of the unpredictability of the EPA and ACOE.

These overreaching rules, laws, and codes which were changed by re-writing the regulations and not amending the original Clean Water Act make a significant part of coastal areas wetlands for no reason at all. So in other words these changes to the Clean Water Act did not even go back to Congress for a vote. This has devastating long-lasting effects on the local economies and creates a significant financial hardship and ruin to hard working families who thought they owned properties as investment that were developable and in many cases were their retirement savings only to be notified upon their wish to sell that the property that it was now a wetland and not developable therefor of little value because the mitigation in most cases cost more than the value of the land.

With all of this being said, I would appreciate the opportunity if you could assist me in setting up a meeting with any of the new incoming transition or landing team members appointed by President Trump that are willing to hear what I have to say that may give them a more accurate picture of the agency they will be running. Again, it was a pleasure speaking with you this week and I sincerely appreciate your offer to help me set up a meeting. As I mentioned, Senator Bill DeSteph would like to attend the meeting and once we have a couple of dates, there are other state and federal elected officials I would like to invite to the meeting. Lastly, I have experience dealing with the State Department too, I would be happy to share some of those stories with Presidents incoming transition team pertaining to that department, a lot of work to be done there too.....talk to you soon!

With Best Regards,

Whitt G. Sessoms, III

Cape Development and Real Estate Co.

524 Winston Salem Ave.

Virginia Beach, Virginia 23451

Cell

Personal Phone/Ex. 6

<<...>>

Cape Development & Real Estate Co.

524 Winston Salem Avenue
Virginia Beach, Virginia 23451
(757) 477-1469
Fax (757) 428-1185

March 4, 2017

Administrator Scott Pruitt
USEPA Headquarters
William Jefferson Clinton South Building
Room 3000
Washington, DC 20004

Dear Administrator Pruitt:

First I would like to congratulate you for being named Administrator of the U.S. Environmental Protection Agency by President Donald Trump. As a Trump supporter, Republican, and businessman, I am proud of his choice for this position

Being in business in Virginia and North Carolina we are extremely hard hit by the additional rules and regulations the Obama administration have arbitrarily implemented pertaining to criteria used for identifying wetlands. These new and overreaching directives, including ones implemented by previous administrations, have rendered prime developable land into undevelopable wetlands or developable at a cost for mitigation that is not economically feasible. This severely stymies business growth and job creation in the Mid-Atlantic region and I suspect in all coastal states. The added consternation with these new regulations is that we have to pay thousands of dollars and wait months if not years for the Army Corp. of Engineers to tell the property owners that their property is now unusable or usable only after investing an additional amount of capital for mitigation that is economically unfeasible. Adding salt to the wound is that the property owners have been paying real estate taxes on the parcels for years as developable property, which was the case prior to the new rules, executive orders, etc. Many of these new rules and regulations occurred without proper public notice and without Congressional approval.

These new directives have moved away from the intent of the Clean Water Act that was envisioned to protect tidal wetlands, marshes, and bogs. Now the Act covers dry, level, elevated woodlands. We currently own a parcel of land in Virginia Beach, Va that we want to develop and the finished product will create substantial jobs and provide a public service. Walking the parcel you would think it is wooded upland and is not and has no wetland components. However with the over regulation from the Obama Administration, portions of this property could possibly be considered wetlands. In other words, this woodland could be in the same category as tidal marsh! This is truly government condemnation of land through over regulation. Mr. Keith Miller is my environmental consultant and I asked him to summarize in more detailed what I am referring to and is attached.

I would be happy, as would Mr. Miller, to meet with any of your staff and brief them on these changed standards to the original Clean Water Act that are killing business. Hopefully once you see the magnitude of this negative government intrusion on property rights and job creation, you will want to roll back these additional changes to the original Clean Water Act. Again, it is a government taking of property and an administrative nightmare with regards to time and expense, not to mentioned lost jobs and business opportunities for the municipalities. Also, I am sure that if these recent directives are reversed, it would save the taxpayers a substantial amount of money that is going to the EPA and Army Corp. of Engineers for the additional staff and expense to oversee and implement these directives.

Again, congratulations on your appointment and I am truly excited you are the new Administrator of the EPA. Please do not hesitate to have any staff person contact me directly for a more in depth analysis of this chronic problem. This letter is to congratulate you on your appointment and to just give you some local insight into how the federal government bureaucracy is smothering business and property owners in this part of the country.

With Best Regards,

A handwritten signature in black ink, appearing to read 'WCS' followed by a stylized flourish.

Whitt G. Sessoms, III
President

cc: The Honorable Bill DeSteph

This is a discussion of the regulatory revisions put into place by the ACOE, EPA and NRCS that have caused significant negative impacts to the economy and land development.

Simply stated, by revising the vegetation categories and the ground water requirements, land that would not meet the test for jurisdictional wetlands (prior to 2009) is now classified as jurisdictional wetlands.

HISTORY

The original Wetlands Delineation Manual was adopted in 1987. In 2009 the “ Atlantic and Gulf Coast Supplement “ was adopted. By 2011 the Supplement had been fully implemented. The Supplement combined with additional revisions to the National Wetlands Plant List resulted in the following changes to the delineation procedures:

1. The original test for establishing sufficient hydrology to meet the ACOE requirements was that water had to be present within 13 inches (or less) of the surface for a period of 30 consecutive days during the “ growing “ season (January, February and March).

This requirement has been revised to state that water has to be present within 13 inches of the surface for 14 consecutive days any time during the year.

The results of this revision is that a property is more likely going to meet the Hydrology test.

2. The original Hydrophytic vegetation requirements listed 5 categories of vegetation. Each category carries a numerical value. By adding the total numeric values you “ score “ each data point area thereby allowing that area to be classified as having met the criteria or not. A score of 20 or more means that the vegetation does not meet the requirements as hydrophytic.

SCORE

- | | |
|-------------------|---|
| 1 | Obligate Wetlands - vegetation that will only grow in very wet conditions |
| 2 | Facultative wetlands - vegetation that will grow in moderately wet |
| conditions | |
| 3 | Facultative - vegetation that will grow in slightly wet conditions |
| 4 | Facultative uplands - vegetation that will grow in moderately dry conditions |
| 5 | Uplands - vegetation that will only grow in well drained uplands areas |

Changes that were made to the National Wetlands Plant List (originally 2009, revised 2014) moved a number of Vegetative species from the Facultative Uplands category into the Facultative category thereby reducing their score by one point. This resulted in the vegetative analysis of an area becoming more likely to meet the Hydrophytic Vegetation test.

The area has hydrophytic vegetation when more than 50% of considered species are classified as obligate wetlands or facultative wetlands.

SUMMARY

In accordance with the Supplemental Wetlands Delineation Manual a property must meet three requirements to be classified as a jurisdictional wetland. One, the soils must be classified as hydric with a chroma (color) of 2 or less. Two, the property must have ground water (Hydrology) present within 13 inches of the surface for a minimum of 14 days during any calendar year. Three, Hydrophytic vegetation (Wetlands plants) must be present as the dominant species.

Note: Hydric soils are caused by the soils being inundated with ground water for a sufficient time to cause a permanent color change. This occurs as a result of lack of oxygen in the soils (anerobic).

Farmed Wetlands

Starting around 2014 the ACOE began looking at existing farm fields for evidence that surface water is standing for a significant amount of time thereby allowing the ACOE to take jurisdiction over those areas as “ wetlands “. The determination is made by comparing field indicators, aerial photographs and satellite infra red images.

Should the owner decide to develop the property they will be required to have a mitigation plan approved (a lengthy and expensive process) and purchase wetlands bank credits prior to development. The mitigation plan preparation and approval can be as long as two years and cost anywhere from several thousand to ten's of thousands of dollars.

In addition to that issue the National Resource Conservation Service (NRCS) and EPA have jurisdiction over prior converted (PC) farm land. These are farm fields that were converted from wetlands to cultivated fields after 1985 under the swamp buster act.

Any change in the current activity, I. E. new cultivating techniques, changes to surface runoff or potential development requires approval from these two federal agencies.

Waters of the United States

In June 2015 the EPA began enforcing a revised rule proposed by the Obama administration in 2014 that greatly expanded their regulatory authority over much of the nation's waterways including but not limited to, rivers, streams, creeks, wetlands, farm ponds and ditches. As usual the regulations are vaguely worded and purposefully confusing

giving the federal agencies free reign as to how they are interpreted and enforced.

The results of these new regulations is that the land owner now must deal with numerous federal agencies, confusing regulations that the agencies themselves don't understand, soaring costs for consultants and the potential for years of negotiating with no guarantee for success.

To: Schnare, David[schnare.david@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]
From: Bromberg, Kevin L.
Sent: Wed 3/8/2017 5:45:24 PM
Subject: FW: EO 12866/13563 Interagency Review: Financial Responsibility Requirements under CERCLA Section 108(b) for Facilities in the Chemical, Petroleum and Electric Power Industries (RIN 2050-AG56)

Deliberative Process Privilege/Ex. 5

David S – please designate someone to handle these issues.

Thanks
Kevin

From: Bromberg, Kevin L.
Sent: Wednesday, November 16, 2016 6:41 PM
To: Jones, Danielle Y. EOP/OMB; 'Gormsen, Eric T (OLP) (JMD)'; Barringer, Jody M. EOP/OMB
Cc: jlaity; **EOP/Ex. 6** Waqar, Tayyaba; Maresca, Charles A.
Subject: RE: EO 12866/13563 Interagency Review: Financial Responsibility Requirements under CERCLA Section 108(b) for Facilities in the Chemical, Petroleum and Electric Power Industries (RIN 2050-AG56)

Summary of the EPA response on this Other Industries notice:

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Before we schedule this discussion, **can a staff level discussion possibly yield a different result here?**

Respectfully,

Kevin

From: Jones, Danielle Y. EOP/OMB [mailto:[\[redacted\]](#)] **EOP/Ex. 6**

Sent: Wednesday, November 16, 2016 3:35 PM

To: 'Gormsen, Eric T (OLP) (JMD)'; Barringer, Jody M. EOP/OMB; Bromberg, Kevin L.

Subject: EO 12866/13563 Interagency Review: Financial Responsibility Requirements under CERCLA Section 108(b) for Facilities in the Chemical, Petroleum and Electric Power Industries (RIN 2050-AG56)

Colleagues,

Please find EPA's response to interagency comment on the Financial Responsibility Requirements under CERCLA Section 108(b) for Facilities in the Chemical, Petroleum and Electric Power Industries notice. I will be setting up a call with EPA to walk through the comments and your outstanding concerns. Below are times that I am available for a discussion so please let me know which times work best for your schedule and I will relay those to EPA. We can also hold individual meetings as well.

Friday, Nov. 18: 10-5:30

Monday, Nov. 21: 11-12 and 4-6

Tuesday, Nov. 22: 10:30-11:30, 12-1, and 2:30-6

Thanks,

Danielle

Danielle Y. Jones

Policy Analyst

Office of Management and Budget

Phone: **EOP/Ex. 6**

To: Whitt Sessoms[Personal Email/Ex. 6]; Hupp, Sydney[hupp.sydney@epa.gov]
Cc: Pruitt, Scott[Pruitt.Scott@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]; Schnare, David[schnare.david@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]; Ericksen, Doug[ericksen.doug@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Benton, Donald[benton.donald@epa.gov]
From: Valentine, Julia
Sent: Fri 3/31/2017 2:31:38 PM
Subject: RE: Clean Water Act and Meeting

Hi Whit,

I am copying Sydney Hupp, the Administrator's scheduler. She will be your best contact. And thank you for sending everything in an email.

Very best,

Julia Valentine

Julia P. Valentine

Assoc. Dir./Acting Dir.
U.S. EPA, Ofc of Media Relations

202.564.2663 direct

Personal Phone/Ex. 6 m/txt

From: Whitt Sessoms [mailto:Personal Email/Ex. 6]
Sent: Thursday, March 30, 2017 11:24 AM
To: Valentine, Julia <Valentine.Julia@epa.gov>
Cc: Pruitt, Scott <Pruitt.Scott@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>; Schnare, David <schnare.david@epa.gov>; Kreutzer, David <kreutzer.david@epa.gov>; Ericksen, Doug <ericksen.doug@epa.gov>; Greaves, Holly <greaves.holly@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Benton, Donald <benton.donald@epa.gov>
Subject: Clean Water Act and Meeting

Hi Julia,

Great talking with you this week and I sincerely appreciate your offer to connect me

with the right people within the EPA to set up a meeting. As you may have gathered from our brief phone conversation, I am very excited about President Trump's vision with regards to the EPA and Administrator Pruitt with his vision and position with the agency. I would like to meet with the appropriate member(s) of the President's transition team that to the best of my ability have copied on this email. Also, I need to give you a little background on my purpose of the meeting.

First let me disclose to you that I am in the real estate development business in southeast Virginia and northeast North Carolina. I have developed many tracts of land requiring me to deal with wetland issues, beach dune issues, and many other facets of government oversight. I have been active specifically in Virginia Beach Va., Currituck County, N.C., and Dare County, N.C. In addition, relating to the purpose of my meeting request with the abovementioned EPA representatives, I would like for you to know I have served on several regulatory boards and commissions at the pleasure of the Va. Beach City Council and previous Governors of Virginia. In particular, I served on the:

1. Governor's Regulatory Reform Advisory Board
2. Beaches and Waterways Advisory Commission
3. Board on Conservation and Development of Public Beaches
4. Congressional Fishing Advisory Board
5. Virginia Marine Resources Commission

The abovementioned boards and commissions are responsible for:

1. Regulatory policy, rule and code making
2. Approving and crafting the required public hearing process for potential regulations, statutes and rules
3. Enacting and administering action for violations of various laws and statutes
4. Permit granting
5. Working with scientist to assist in crafting proposed legislation and to set standards in determining the success and failure of the program and initiative
6. Hearing violators of regulations and laws and meting the appropriate penalty

Again, relating to the proposed abovementioned meeting, in my business I have and continue to deal and interact with the following federal, state, and local regulatory agencies, government bodies, and authorities:

1. U.S. Environmental Protection Agency

2. Army Corp. of Engineers
3. U.S. Fish and Wildlife Service
4. U.S. State Department
5. National Marine Fisheries
6. North Carolina Department of Environmental Quality
7. Currituck County Planning
8. Dare County Planning
9. North Carolina Department of Transportation
10. Virginia Department of Transportation
11. Virginia Department of Environmental Quality
12. Virginia Institute of Marine Science
13. Virginia Marine Resources Commission
14. City of Virginia Beach Planning, Zoning, and Waterfront Operations
15. County of Mecklenburg Planning and Zoning
16. Surface Transportation Board
17. Economic Development Partnership of North Carolina
18. NCEast Alliance
19. Virginia Beach Economic Development
20. Virginia Port Authority
21. Nature Conservancy

So, as you can see, I have a tremendous amount experience dealing with local, state, and federal environmental, economic development, and other government issues pertaining to land and water bodies. I have to admit, of all of the agencies, departments, boards and commissions I have dealt with and/or served on, the one that appears to exert the greatest non sanctioned overreach enabled by lack of self-governance from

within and further perpetuated by executive orders coupled with a systemic lack of public input from major stakeholders on rule, policy, and code making is the U.S. Environmental Protection Agency! By major stakeholders I mean individuals and entities that own significant tracts of land that are severely impacted by new and existing laws, policies, and codes of the Clean Water Act. The EPA has the wetland inventory at its fingertips that should be used as a database of those affected property owners who need to be contacted to give input to new laws and regulations that directly affect the value of their property. Use me as an example. I own and have owned several large parcels that have required me to deal with the ACOE/EPA. Also I have had direct business dealings with Fish and Wildlife to acquire my property with their consulting the EPA and I have not received any request or notification for public input from the EPA pertaining to a new rule, regulation, or law in the last twenty years nor has any notification been in a local newspaper or any other communication that reaches out to stakeholders. Please note my attached letter to Administrator Pruitt along with the attached summary from my environmental engineer substantiating certain issues I mention above.

I need to disclose an interaction I had with the ACOE pertaining to a field visit to a property of mine in Currituck County in North Carolina as it relates to the Clean Water Act and somewhat showcases my frustration. I had the property under contract that required a letter from the ACOE that they did not have jurisdiction over the tract. They were from the Wilmington office and we met on the property several years ago. It was a 40 acre farm that had been cultivated for the last 150 years and located on US 158 in Currituck County NC. The ACOE representatives on site initially stated the whole farm was under their jurisdiction because the drainage ditches drained into a two foot pipe under US 158 which then emptied into Currituck Sound. They stated that the ditches were "navigable" thus were "waters of the U.S." When I asked how the two foot wide ditches were navigable under the Clean Water Act, they stated because they would pass the "canoe test" meaning if you could float a canoe in the water in the ditch, then it was navigable! Of course after engaging several elected officials representing that area they talked sense into the ACOE and in the end I did not need a permit to develop the farmed area and I closed on the property. I also sold several tracts to the Fish and Wildlife and their employee went through with me the same process with regards to them buying our property to expand the Currituck National Wildlife Refuge. With all of my interaction with the ACOE pertaining to Clean Water Act issues, and all of the above-mentioned boards and commissions I have served on and dealt with, I have never been notified or seen a notification in an official or unofficial capacity of an EPA act or proposed code, rule, or any other action.

After exhaustive "schooling" on the Clean Water Act from my own experience and tutoring by my environmental engineers, I have become very concerned with the over reach and inverse condemnation that the Act has become and created over time. Looking at the original intent of the act as being the protection of tidal wetlands, marshes, and bogs, it is now reclassifying many more types of land as wetlands that were not wetlands in the past based and this gross expansion is based on no scientific reason. The best example is "Flatwoods or Winter Wet Woods" defined by the EPA as wet for "extended periods". These woods and forests are traditional woods or forests

with traditional vegetation and leaves covering the earth. Sometimes after a rain event, puddling occurs in small areas as it does everywhere that is flat. This commonplace occurrence now creates a "wetland" under the jurisdiction of the EPA/ACOE that was not a wetland previously. Note the following link....

<https://books.google.com/books?id=ZBQNDgAAQBAJ&pg=PA422&lpg=PA422&dq=winter+wet+wood>

which is a book titled: Wetland Indicators a Guide to Wetland Formation, Identification, Delineation, Classification, and Mapping. Page 428 states: "Complex landscapes pockmarked with small wetlands and small drylands make it practically impossible to separate wetlands from drylands." This in fact categorizes 90% of the land in southeast Virginia and northeast North Carolina. This coupled with the recent inclusion of loblolly pine trees as an indicator of wetlands goes past reasonability. Pines are found all over the entire states of Virginia and North Carolina.....tidewater, piedmont, and mountainous regions To make it even more frustrating, Loblolly pines cannot even physically grow in traditional wetland areas. This further deems non wetland areas as wetlands. . To make this even more interesting, I have an application in at the Norfolk office of the ACOE for a site visit to a property I own in the middle of Virginia Beach on the fringe of the Resort Area District. The city wants to buy this tract and it would be for a use that would generate numerous jobs and be a big help to our resort trade that generates \$1.4 billion dollars to the city economy. The city wants a letter from the ACOE stating they do not have jurisdiction over the parcel which is an elevated wooded forest with a stand of 100 year old pines that is dry with simply a leaf matting covering the ground. This is how skittish buyers of any property in the tidewater areas of North Carolina and Virginia have become because of the unpredictability of the EPA and ACOE.

These overreaching rules, laws, and codes which were changed by re-writing the regulations and not amending the original Clean Water Act make a significant part of coastal areas wetlands for no reason at all. So in other words these changes to the Clean Water Act did not even go back to Congress for a vote. This has devastating long-lasting effects on the local economies and creates a significant financial hardship and ruin to hard working families who thought they owned properties as investment that were developable and in many cases were their retirement savings only to be notified upon their wish to sell that the property that it was now a wetland and not developable therefor of little value because the mitigation in most cases cost more than the value of the land.

With all of this being said, I would appreciate the opportunity if you could assist me in setting up a meeting with any of the new incoming transition or landing team members appointed by President Trump that are willing to hear what I have to say that may give them a more accurate picture of the agency they will be running. Again, it was a pleasure speaking with you this week and I sincerely appreciate your offer to help me set up a meeting. As I mentioned, Senator Bill DeSteph would like to attend the meeting and once we have a couple of dates, there are other state and federal elected officials I would like to invite to the meeting. Lastly, I have experience dealing with the State Department too, I would be happy to share some of those stories with Presidents incoming transition team pertaining to that department, a lot of work to be done there too.....talk to you soon!

With Best Regards,

Whitt G. Sessoms, III

Cape Development and Real Estate Co.

524 Winston Salem Ave.

Virginia Beach, Virginia 23451

Cell – Personal Address/Ex. 6

<<...>>

To: Schnare, David[schnare.david@epa.gov]
Cc: Kreutzer, David[kreutzer.david@epa.gov]; Maresca, Charles A.[Charles.Maresca@sba.gov]
From: Bromberg, Kevin L.
Sent: Wed 3/8/2017 3:53:00 PM
Subject: Final Rule that Warrants Reconsideration - Steam Electric Effluent Limitations Guideline

Dave –

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Dave K, I don't know if you're following this one.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Advocacy Letter link:

[https://www.sba.gov/sites/default/files/Final%20SBA%20Advocacy%20Stream%20Electric%20%20Proposal%](https://www.sba.gov/sites/default/files/Final%20SBA%20Advocacy%20Stream%20Electric%20%20Proposal%20for%20the%20Electric%20Delivery%20Program%20RFP%20Final%20Version%2012-11-13.pdf)

note : letter dated 9/9/12 – actually 9/9/13.

We can discuss this further as you move along.

Kevin

■ Kevin Bromberg

Assistant Chief Counsel for Environmental Policy

▼ SBA // Office of Advocacy

409 3rd St. SW, Washington, D.C. 20416

✉ kevin.bromberg@sba.gov 📞 202.481.2963

📞 Personal Phone/Ex. 6



Cc: john.willoughby@erametgroup.com[john.willoughby@erametgroup.com]; Nick Pyle[nick@dcplye.com]; Laure Guillot[laure.guillot@erametgroup.com]
To: Schnare, David[schnare.david@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]; Sugiyama, George[sugiyama.george@epa.gov]; Benton, Donald[benton.donald@epa.gov]
From: Theresa Pugh
Sent: Wed 2/22/2017 7:37:04 PM
Subject: Letter from OH AG to Administrator Pruitt re Eramet and ferroalloy NESHAP 2220644_1.pdf

Dear Mrrs. Benton, Schnare, Sugiyama and Kreutzer:

Today I received this letter from Ohio Attorney General Mike DeWine to Administrator Pruitt. Eramet asked that I convey it to you.

On behalf of Eramet, we thank you for your consideration of the complexities associated with compliance with this NESHAP -- primarily due to the flawed camera (with false positives) that would drive up compliance costs. It is expected that the use of this flawed camera would be the largest driver for layoffs.

Please see AG DeWine's attached letter.

The NESHAP compliance date requires communication to employees if layoffs are eminent. Thus Eramet hopes to have a meeting with appropriate EPA staff at your earliest possibility. Eramet respects that you have many other issues to evaluate. But for a company with less than 200 employees, a layoff of up to 90 in Ohio is severe. Eramet hopes for a review of the regulation. It is not completely clear if the rule was intended to be covered by the Priebus memo given when it was issued. Even if covered by the delay, that delay date buys little time before layoff notices would have to be given under contract terms in March.

Please see attachment. My telephone number is 703-507-6843.

Thank you for your consideration.

Theresa Pugh

Thank you,
Theresa

Theresa Pugh Consulting, LLC
-a woman-owned small business
703-507-6843 Office

2313 North Tracy Street
Alexandria, Virginia 22311
www.theresapughconsulting.com

Sent from mobile device - please excuse autotext error or typo

To: Konkus, John[konkus.john@epa.gov]; Ericksen, Doug[ericksen.doug@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]; Sugiyama, George[sugiyama.george@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]; Schnare, David[schnare.david@epa.gov]; Konkus, John[konkus.john@epa.gov]
From: Grantham, Nancy
Sent: Fri 2/17/2017 11:43:02 PM
Subject: RE: Meet Administrator Pruitt

FYI .. you do not need to RSVP – we have reserved seating for you.

Thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

Personal Phone/Ex. 6 **(mobile)**

From: Grantham, Nancy
Sent: Friday, February 17, 2017 4:33 PM
To: Konkus, John <konkus.john@epa.gov>; Ericksen, Doug <ericksen.doug@epa.gov>; Benton, Donald <benton.donald@epa.gov>; Greaves, Holly <greaves.holly@epa.gov>; Sugiyama, George <sugiyama.george@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Kreutzer, David <kreutzer.david@epa.gov>; Schnare, David <schnare.david@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: FW: Meet Administrator Pruitt

Fyi

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

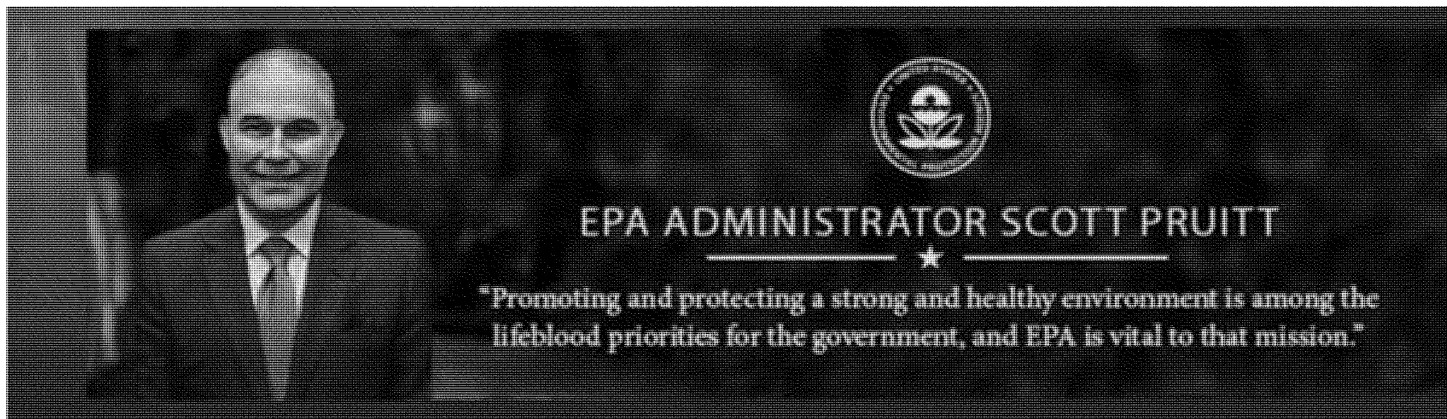
Personal Phone/Ex. 6 (mobile)

From: MassMailer

Sent: Friday, February 17, 2017 4:10 PM

To: MassMailer <massmailer@epa.gov>

Subject: Meet Administrator Pruitt



Please join Administrator Scott Pruitt on Tuesday, February 21, at 12 p.m. EST, as he addresses EPA staff for the first time. The event will be held in the Rachel Carson Green Room. Former Acting Administrator Catherine McCabe will introduce our new Administrator.

There are several options for participating in the event:

- **In person:** The event will be held in the Green Room at the William Jefferson Clinton Federal Building (WJC) in Washington, D.C. Please enter through the WJC **North** entrance no later than 11:45 a.m. EST. As seating is limited, we are asking

staff to kindly RSVP at **Personal Email/Ex. 6**

You will receive an email confirming that you have a reserved seat; please bring the email with

you on Tuesday morning.

- **EPAtv Viewers:** The event will be broadcast through EPAtv. For those watching on EPA's network, launch Internet Explorer and click on the following link **internal url//Ex.6** If prompted for a username and password, enter your correct information. Remember, EPAtv only works on Internet Explorer.

• **Teleworkers:** Unfortunately, EPAtv cannot be accessed while teleworking; therefore, staff wishing to watch the event may view it by clicking on the following link www.epa.gov/live.

• **Listen-only line:** Listen-only phone lines will be available for this event. The operator assisted

call-in number is **Conference Call Code/Ex.6** and the conference ID number is **Conference Call Code/Ex.6**

• **Recorded Event:** For employees unable to attend in-person or watch live, the recorded event will be available on [EPAtv On-Demand](#) by February 22.

Persons needing reasonable accommodations should contact Kristen Arel at 202-564-5367.

This email message is being sent to all employees.

To: Konkus, John[konkus.john@epa.gov]; Ericksen, Doug[ericksen.doug@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]; Sugiyama, George[sugiyama.george@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]; Schnare, David[schnare.david@epa.gov]; Konkus, John[konkus.john@epa.gov]
From: Grantham, Nancy
Sent: Fri 2/17/2017 9:33:31 PM
Subject: FW: Meet Administrator Pruitt

Fyi

Nancy Grantham

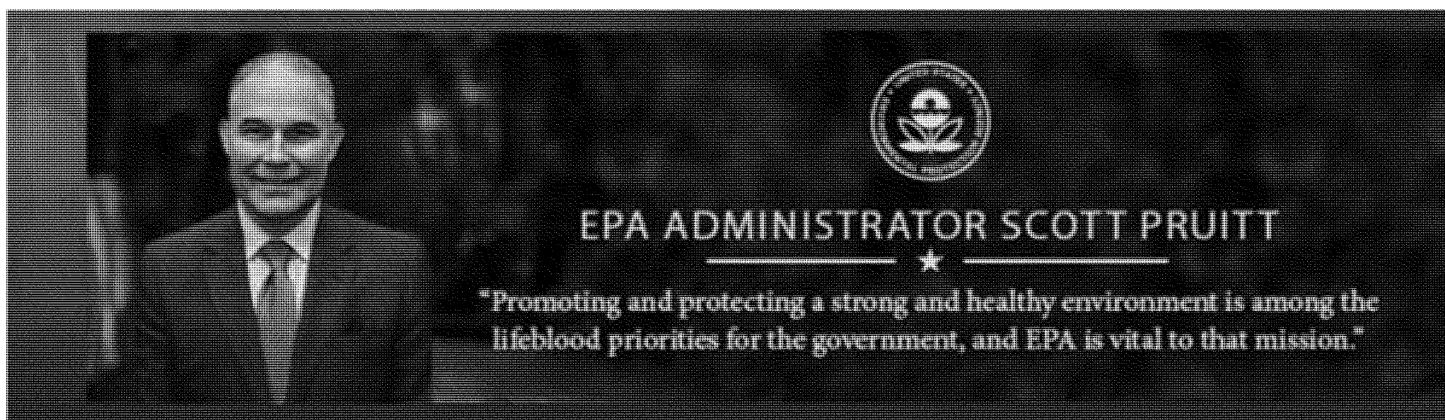
Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

Personal Phone/Ex. 6 **(mobile)**

From: MassMailer
Sent: Friday, February 17, 2017 4:10 PM
To: MassMailer <massmailer@epa.gov>
Subject: Meet Administrator Pruitt



Please join Administrator Scott Pruitt on Tuesday, February 21, at 12 p.m. EST, as he addresses EPA staff for the first time. The event will be held in the Rachel Carson Green Room. Former Acting Administrator Catherine McCabe will introduce our new Administrator.

There are several options for participating in the event:

- **In person:** The event will be held in the Green Room at the William Jefferson Clinton Federal Building (WJC) in Washington, D.C. Please enter through the WJC **North** entrance no later than 11:45 a.m. EST. As seating is limited, we are asking staff to kindly RSVP at [Personal Email/Ex. 6](#).

You will receive an email confirming that you have a reserved seat; please bring the email with

you on Tuesday morning.

- **EPAtv Viewers:** The event will be broadcast through EPAtv. For those watching on EPA's network, launch Internet Explorer and click on the following link [internal url/Ex. 6](#). If prompted for a username and password, enter your correct information. Remember, EPAtv only works on Internet Explorer.

• **Teleworkers:** Unfortunately, EPAtv cannot be accessed while teleworking; therefore, staff wishing to watch the event may view it by clicking on the following link www.epa.gov/live.

• **Listen-only line:** Listen-only phone lines will be available for this event. The operator assisted

call-in number is [Conference Call Code/Ex.6](#) and the conference ID number is [Conference Call Code/Ex.6](#)

• **Recorded Event:** For employees unable to attend in-person or watch live, the recorded event will be available on [EPAtv On-Demand](#) by February 22.

Persons needing reasonable accommodations should contact Kristen Arel at 202-564-5367.

This email message is being sent to all employees.

To: Brown, Byron[brown.byron@epa.gov]
Cc: McManus, Michael J.[michael.mcmanus@sba.gov]; Sugiyama, George[sugiyama.george@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Bromberg, Kevin L.
Sent: Thur 3/9/2017 8:57:02 PM
Subject: FW: Hard Rock Mining Meeting
CERCLA 108(b) Advocacy Comment Letter - EPA FINAL .pdf

Here is the comment letter. We should probably schedule a talk together after you've read this but before the March 21, (not April 21) meeting. Yes sorry about the date mixup.

From: Bromberg, Kevin L.
Sent: Thursday, March 09, 2017 2:33 PM
To: 'Schnare, David'
Cc: 'Sugiyama.george@Epa.gov'; Kreutzer, David (kreutzer.david@epa.gov)
Subject: Hard Rock Mining Meeting

My meeting (accompanied by our economist, Michael McManus) is scheduled for Tuesday April 21 at 11 AM with Barry Breen, and presumably OLEM staff. You asked me to tell you so that you could send someone to attend. Charley Maresca, the Director for Interagency Affairs and me are also meeting with Samantha Dravis on the following day to address this and other issues (SBREFA panel procedures and regulatory reform).

At this meeting with OLEM, I'd like to discuss our comment letter, EPA's preliminary response to this letter, and EPA's plans to work on this rulemaking during the 120 day comment period extension. **Deliberative Process Privilege/Ex. 5** We also could briefly address 108(b) and the three "other" industries.

David, who is being assigned to this issue within the transition team (and possibly OP?)

George, I thought I'd copy you on this note since this issue is of major significance. Feel free to contact me.

Kevin

📍 Kevin Bromberg

Assistant Chief Counsel for Environmental Policy

📍 SBA // Office of Advocacy

409 3rd St. SW, Washington, D.C. 20416

✉ kevin.bromberg@sba.gov 📞 202.481.2963

📄 **Personal Matters/Ex. 6**





January 19, 2017

VIA REGULATIONS.GOV

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency

Re: Financial Responsibility Requirements for the Hardrock Mining Industry (Docket ID: EPA-HQ-SFUND-2015-0781)

Dear Administrator McCarthy:

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submits the following comments in response to the Environmental Protection Agency's (EPA) proposed rule, **"Financial Responsibility Requirements for the Hardrock Mining Industry."**¹ The proposed rule would impose costly requirements on hardrock mines owned by small firms, without evidence that a problem exists warranting intervention. The proposal requires mines to acquire financial assurance coverage (i.e. insurance) to cover potential liabilities for releases of hazardous substances from a mine. However, these small mines are already highly regulated by robust state and Federal programs. New Federal standards risk damaging these programs which have, in recent years, effectively addressed the same issues at modern small mines. Further, EPA missed the opportunity to receive important feedback from small businesses through the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process and did not consider less costly regulatory alternatives as required by the Regulatory Flexibility Act (RFA).

Advocacy strongly recommends that EPA withdraw this ill-advised proposal. At a minimum, EPA should examine the relevant state and Federal programs and identify any "gaps" in their coverage, so that these regulators can move to improve their programs. EPA can then act to address these gaps in a separate proposal, if deemed necessary.

The Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily

¹ 82 Fed. Reg. 3388 (January 11, 2017).



409 3rd Street, SW / MC 3114 / Washington, DC 20416 / 202 -205-6533 ph / 202-205-6928 fax
www.sba.gov/advocacy

reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.⁴

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁵ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁶

Background

Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 directs the agency to develop requirements for classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. In a July 2009 Federal Register notice, EPA determined that the agency would first consider financial responsibility requirements under CERCLA section 108(b) for classes of facilities within the hardrock mining industry.⁷ The agency supported its determination by citing the billions of dollars that EPA expended historically under CERCLA to address legacy mines. This notice was published without any public input. The National Mining Association wrote to EPA explaining that modern mines under current state and Federal regulations, which are the subject of this rule, do not pose a significant financial risk to taxpayers, and thus no regulation was required by this statute. The EPA determination was strongly opposed by the mining community, mining regulators, and the States, generally finding that current regulation of modern mines, including financial requirements were working and that no Federal rule was required.

In the July 2009 notice, EPA defined hardrock mining to include classes of facilities that extract, beneficiate or process metals (e.g., copper, gold iron, lead, magnesium, molybdenum, silver, uranium, and zinc) and non-metallic, non-fuel minerals (e.g., asbestos, phosphate rock, and sulfur). Certain non-fuel hardrock mining sectors (e.g., construction sand and gravel) were not included among those hardrock mining facilities identified in the notice.

Thirty-six percent of hardrock mining businesses are small businesses, and EPA estimates that these firms will face significant costs under this proposal.⁸ The agency estimates that the

² 5 U.S.C. §601 et seq.

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

⁴ 5 U.S.C. §609(b).

⁵ Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁶ *Id.*

⁷ "Identification of Priority Classes of Facilities for Development of CERCLA Section 108(b) Financial Responsibility Requirements," 74 Fed. Reg. 37213 (July 27, 2009).

⁸ See RIA, pp. 2-8 and 8-2.

proposal would impose costs in excess of three percent of revenue for many small mines, a very significant economic burden. On August 24, 2016, EPA convened a panel, in accordance with SBREFA requirements (hereinafter, “SBREFA panel” or “panel”), but the panel did not complete the panel report during the required 60-day time frame. The panel report was completed on December 1, 2016, the day EPA signed the proposed rule for publication, long after EPA had submitted a draft proposal for review to the Office of Management and Budget under Executive Order 12866.⁹

On January 11, 2017, EPA issued the proposal.¹⁰ The proposed rule requires an amount of money, called financial responsibility, that mines must have available to cover the costs associated with potential releases of hazardous substances. The rule requires hardrock mining owners and operators to identify a financial responsibility amount for their facility, to demonstrate evidence of financial responsibility for thirteen response categories, and to maintain the required amount of financial responsibility until released from the requirements by EPA. The rulemaking would allow for financial responsibility requirements to be met by a number of instruments, including surety bonds, letters of credit, insurance, and trust funds. The rulemaking specifically proposed two options. Under Option 1, EPA would not allow the use of a financial test or corporate guarantee mechanism to meet financial responsibility requirements. Under Option 2, a financial test based on a credit rating and a corporate guarantee mechanism would be available to owners and operators to meet these requirements.

Advocacy’s Comments

The Office of Advocacy urges EPA to withdraw this proposed rule. There is no statutory need for this regulation, nor are there any significant environmental benefits demonstrated by EPA. Instead, EPA is proposing a rule that would cost the industry \$171 million annually for an annual savings to the government of \$15.5 million by its own estimate, to address risks that are already addressed by state and Federal agencies. The agency has conspicuously failed to articulate a cohesive response to the argument that state and Federal rules address the same risks comprehensively. By its own analysis, many small mines would face annual costs of some unknown amount in excess of three percent of revenue – an extremely high cost.

The lack of environmental benefits has been amply established by the comments received in the SBREFA panel proceeding, and comments authored by the Western Governors, individual states, mining companies and the association of mining regulators.¹¹ While EPA is unsure that certain response categories¹² are not governed by existing authorities, Advocacy believes, along with the

⁹ Under Executive Order 12866, federal agencies submit draft proposed and draft final regulations of economic or policy significance for review by the OMB Administrator of the Office of Information and Regulatory Affairs and affected federal agencies.

¹⁰ 82 Fed. Reg. 3388 (January 11, 2017).

¹¹ The Panel report contains the comments of small mining companies and AE&MA; March 29, 2016, Western Governors letter to McCarthy, August 17, 2016 Arizona DEP letter to Krueger, ORCR, EPA; August 19 Florida DEP letter to Barr, ORCR, EPA; August 16, 2016 Interstate Mining Compact Commission letter to Sasseville, ORCR, EPA.

¹² EPA has developed 13 response categories to represent the universe of different remedial actions that are performed at mining sites. Financial assurance amounts are developed for each response category.

U.S. Bureau of Land Management (BLM) and the U.S. Forest Service (USFS),¹³ that all response categories are likely covered. Advocacy is concerned that EPA may not have correctly analyzed the relevant documentation. The office is further concerned that EPA is replacing expert site-based analysis of financial assurance, which is the basis for existing federal and state financial assurance requirements, with a simplified formula approach that has been tried and rejected by those states and Federal mining regulators.

1. The EPA Proposal Would Duplicate Existing Federal and State Regulatory Requirements

EPA believes that the hardrock mining industry warrants regulation to address the “degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances.”¹⁴ Advocacy agrees with many others that believe that numerous state and federal regulations already address these risks, and that the industry record for modern mining operations (post-1990) show there is no need for additional Federal regulation. The U.S. Bureau of Land Management (BLM) and USFS both reported zero National Priority List (NPL or Superfund)¹⁵ listings for the thousands of modern mines for which plans have been approved post-1990. As stated by the American Exploration & Mining Association: “The fact that no hardrock mining or beneficiation plan of operation approved by the BLM or USFS since 1990 has been added to the CERCLA NPL demonstrates that the ‘degree and duration of risk’ for hardrock mining is too small to regulate.”¹⁶

In Nevada, where more than 50 percent of the mines subject to this rule are located, the state has called few bonds since 1990. Even these were relatively small mines and small bonds – of up to \$500,000. All or most of these were bonded earlier in the Nevada program, and the bonding requirements have been more recently upgraded, in part, because of the experience gained from administering these mine bankruptcies in the early 1990’s.¹⁷

In sum, there is little evidence of a need for the proposed CERCLA 108(b) bonding program which EPA estimates to involve tens of billions of dollars. EPA’s scheme would only potentially be justified if modern mines were facing the same type of remedial costs as previous legacy sites that did generate billions of dollars of costs. This rulemaking is not required by statute because the risk is minimal.

It is important to place EPA’s proposed CERCLA § 108(b) hardrock mining rule in historical context. When Congress enacted CERCLA in 1980, there were few financial assurance requirements in either state or Federal regulations, and what requirements existed were largely

¹³ Discussion of Federal and state presentations found in AE&MA SBREFA comments dated September 16, 2016, p. 3.

¹⁴ 82 Fed. Reg. 3388, 3486 (January 11, 2017); proposed 40 CFR 320.1(b) finding.

¹⁵ The Superfund National Priority List contains the list of facilities that are eligible for funding from the Superfund.

¹⁶ July 7, 2016 SBREFA Panel comment letter from American Exploration & Mining Association, pp. 9-10.

¹⁷ See The Evolution of Federal and Nevada State Reclamation Bonding Requirements for Hardrock Exploration and Mining Projects, Jeffrey Parshley, Debra W. Struhsacker, Reno, Nevada (January 2009).
http://www.srkexploration.com/sites/default/files/file/JParshley_ReclamationBondingRequirementsNevada_2009.pdf

untested. For example, BLM's surface management regulations for locatable minerals were not yet in effect.¹⁸ In 1980, most state regulations had very limited – if any – financial assurance requirements; Nevada's reclamation regulations only became effective in 1990. There existed a clear regulatory void with respect to a lack of financial assurance requirements for hardrock mines at the time that CERCLA was enacted.

However, in 2017, federal and state mining regulatory and financial assurance requirements are now mature and robust. Both BLM and USFS have effective and comprehensive financial assurance requirements that extend far beyond reclamation (i.e., earthworks and revegetation) and can include long-term financial assurance for sites where warranted. Similarly Nevada, Utah, New Mexico, and South Dakota have robust financial assurance programs established through one or more state regulatory programs in each state. The Federal Land Management Agencies (FLMA) and state agencies have existing comprehensive bonding and regulatory requirements that would be duplicated by every response requirement that EPA intends to address under CERCLA § 108(b).¹⁹

The regulatory authorities that oversee hardrock mining have decades of experience in evaluating mining operations, determining levels of financial assurance, compelling reclamation and decommissioning, and ensuring that releases of hazardous substances do not occur. As noted in SER comments supplied by Wyo-Ben, Inc.: "...presentations made it abundantly clear that these programs were not narrowly focused on reclamation (recontouring and revegetation) but also included provisions to deal with releases of contaminants meeting the CERCLA definition of hazardous substances from operating and closed mine sites."²⁰ SER comments noted that existing federal and state programs have been strengthened by a close working relationship between those agencies and the industry that spans decades.

Although EPA states that these mining regulations are "distinct" from the CERCLA 108(b) requirements, this does not mean that the Federal and state mining requirements do not address the same response categories using other legal authorities and different language. An entirely duplicative CERCLA § 108(b) financial responsibility program would be inconsistent with the "degree and duration" of risk associated with potential releases from current highly regulated and fully bonded hardrock mines. EPA is proposing an additive regulatory scheme in the absence of a clearly articulated need as to why these existing programs are deficient or require additional financial assurance.

Pershing Gold Corporation in comments supplied during the SBREFA Panel process stated:

EPA's CERCLA 108(b) rulemaking for hardrock mining and beneficiation is a classic "solution in search of a problem;" a problem that clearly does not exist. The hardrock mining states and the federal land management agencies have comprehensive, robust regulatory programs in place that address financial assurance requirements associated with mining and beneficiation, reclamation,

¹⁸ The 43 C.F.R 3809 BLM requirements became effective on January 1, 1981.

¹⁹ Discussion of Federal and state presentations found in AE&MA SBREFA comments dated September 16, 2016, p. 3.

²⁰ July 7, 2007 SBREFA Panel comment letter from Wyo-Ben, Inc., p. 3.

closure and post-closure issues. These programs substantially reduce, if not eliminate, the risk that a mine will have a release of hazardous substances. The states and FLMA's have the expertise and staff to calculate the appropriate amount of financial assurance based on the unique circumstances and features, including geochemistry of the rock, for each mining operation and to adjust financial assurance as required over the life of the operation, including post-closure.

The FLMA's and state's comprehensive, robust regulatory programs are designed to prevent the release of hazardous substances and assure sufficient financial assurance is in place to protect the taxpayer in the event of bankruptcy or an event that requires corrective action.

EPA appears to hold the position that somehow the existing federal and state financial assurance programs deal solely with traditional reclamation and mine closure activities (e.g., recontouring and revegetating disturbed areas). This position is incorrect. The existing regulatory requirements for hardrock mining go far beyond reclamation and closure and include many provisions designed to protect the environment. Consequently, they include measures to prevent releases of contaminants from operating and closed mines that would come under the CERCLA 107 hazardous substances definition.²¹

These regulations minimize the potential for releases and provide effective monitoring requirements to detect potential releases before they occur. The existing state and Federal regulatory schemes provide cradle-to-grave regulatory authority and financial assurance that are the functional equivalent to CERCLA 108(b) requirements. Adaptive management requirements require pre-emptive actions to avoid releases into the environment. As a result of the currently required monitoring, reporting and periodic inspections, regulators are able to respond to potential and actual releases. The report of the National Research Council (NRC) in 1999 concluded that the modern regulatory controls adopted by Federal and state agencies would effectively address the environmental releases.²²

Most significantly, Pershing Gold provided a table of the financial assurance requirements for the BLM and Nevada detailing how these financial assurance requirements cover each of the 13 response categories targeted in the proposal. An analogous table can also be produced for the U.S. Forest Service. EPA is proposing to eliminate requirements on a category-by-category basis for all 13 response categories, and yet has failed to explain whether it finds any "gaps" in this coverage.²³ Since BLM, USFS and Nevada, according to the best information available to

²¹ July 7, 2016 SBREFA Panel comment letter from Pershing Gold Corporation, pp. 6-7.

²² Hardrock Mining on Federal Lands, National Research Council, National Academy of Sciences (1999), <https://www.nap.edu/catalog/9682/hardrock-mining-on-federal-lands>.

²³ In the panel report, EPA states that CERCLA "fills the gap" where regulations "fail to prevent releases or threatened releases of hazardous substances, and it addresses environmental problems as they are identified." Report at 9. EPA provides no analysis or justification to explain how the comprehensive programs in the states and the Federal Land Management Agencies do not address the same situations. The agency appears to believe that making a statement is enough to establish its validity.

us, provide comprehensive coverage in 13 response categories, there is no justification for further Federal intervention in these apparently successful programs.

2. EPA Preamble Discussion of Current Releases from Modern Mines Does Not Support Need for New Rule – Current Federal and State Programs Are Working To Address Current Releases

EPA includes a discussion in the preamble about currently operating mines and current and future remedial actions.²⁴ This discussion (and the underlying background document prepared for the record)²⁵ is being used by EPA to support the need for the 108(b) rule to address problems at these or other similar sites. The background document discusses sources of releases at approximately thirty recently or currently operating mines and mineral processing facilities that had no previous significant legacy mining issues. EPA states: “These releases to the environment from mining and mineral processing activities, including tailings impoundments, waste rock piles, open pits, and leach pads were subsequently mitigated using CERCLA or CERCLA like actions under Federal and/or state statutory authority. Mines that have predicted future discharges to the environment and have proposed either preventative actions or CERCLA like mitigations also are discussed.”²⁶ Yet, EPA does not provide any evidence in the record about whether the current regulatory system is handling the releases effectively, or whether there is a need for supplemental EPA expenditures to address recent hazardous substance releases at currently operating/non-NPL hardrock mines. As described above, EPA simply describes evidence of recent releases, while not addressing the fact that the responses to these releases are potentially being handled effectively under the existing regulations. If other Federal and state programs adequately handle these releases, this would undermine, rather than support the foundation for this proposal.

In Advocacy’s review of several mining sites identified by EPA in the preamble as having relatively recent releases of hazardous substances, each firm appeared to be addressing releases from current revenues. Furthermore, each mining regulatory authority also had a financial assurance instrument in place to address potential costs associated with mine closure. In none of the releases that Advocacy reviewed did the mining authority need to make use of the existing bonds. In each case, the mining firm was paying for the remediation, reinforcing the view that this proposal is not necessary.²⁷

For example, in the case of the Pole Canyon ODA, there is an ongoing removal and remedial action to address elevated selenium and other contaminants.²⁸ However, the mine owner, J.R. Simplot Company, is performing the work under the oversight of the USFS at its own expense - a cost of about \$7 million. No USFS bond is being used. This is an illustration of the current system working, not the need for a supplemental EPA rule. Remedial actions at currently operating mines do not, alone, provide support for the need for this rule.²⁹

²⁴ 82 Fed. Reg. 3388, 3471 (January 11, 2017).

²⁵ See U.S. EPA, Office of Land and Emergency Management, Memorandum to the Record: Releases from Hardrock Mining Facilities, November 2016; 82 Fed. Reg. 3471 (January 11, 2017) n. 190.

²⁶ 82 Fed. Reg. 3388, 3471 (January 11, 2017).

²⁷ SC&A memo to Advocacy, dated January 18, 2017 (available from Advocacy).

²⁸ Id.

²⁹ Id.

Contrary to the EPA assertions of the need for CERCLA 108(b) to address response actions from modern mine releases, Advocacy's more targeted review of some of these mines points clearly to the opposite conclusion. If EPA wants to proceed further in this rulemaking, the agency should perform a complete examination of the entire mining sample to determine if the current regulatory system is working. EPA's analysis instead addresses the strawman issue of whether releases occur, and not whether additional financial assurance should be imposed.

3. EPA's Method to Determine Financial Responsibility Is Not Sound; A New Approach Should Be Developed Subject to Peer Review Before Proposal

EPA's proposed rule employs a formulaic method using multiple subformulas and one to three site-specific variables to determine a mine's financial assurance amount. These subformulas were derived from performing thirteen separate regression analyses using data from currently operating or proposed mines reclamation and closure plans.³⁰ The small entity representatives universally rejected this uniform national approach in favor of the expert-driven site-specific engineering approach adopted by Federal and state regulators developed over the last few decades. For example, the Nevada Standardized Reclamation Cost Estimator (SRCE) software is a site-specific methodology used to calculate reclamation and closure costs. The State of Nevada, other states, Bureau of Land Management, and the U.S. Forest Service use the SRCE. The site specific approach is used by the mining community and these regulators because it has been found to be much more accurate than simplified schemes, such as the EPA methodology. EPA adopted its simplified approach so that it could reduce its own regulatory implementation burden,³¹ without any apparent effort to address the concern that such an approach would be substantially inaccurate for many mines.

The SERs asserted that the operation of a modern hard rock mine varies dramatically between sites due in part to different climates, deposit types, and varying permit requirements.³² As a result, Advocacy believes that the current regression analysis in the proposed rule cannot capture these differences adequately, and cannot replace the site-specific expert-driven methodology almost universally adopted across the country. The end result of EPA's approach provides a formula that predicts the average cost, dependent on acres and few other variables, across all facilities. This overarching approach will, by design, over-predict the costs of small responses and potentially under-predict costs of very large responses. Such an approach is particularly harsh on small mines that would be required to post large, unneeded financial assurance. The

³⁰ EPA developed 13 different subformulas to develop financial assurance amounts for the 13 response categories; EPA Formula Background, Chapter 4, Response Component Regression Analysis.

³¹ 82 Fed. Reg. 3388, 3401 (January 11, 2017).

³² "This benchmarking approach is an extremely simplistic approach for creating a cost estimate and cannot account for numerous site specific/project specific conditions that can have profound impacts on the costs. In other words, using the acreage of a tailings impoundment multiplied by some one-size-fits-all cost/acre to determine the cost of a "response activity" for any tailings impoundment will either underestimate the cost, or overestimate the cost." AE&MA September 16, 2016 Letter, p.7; "The SRCE costs are based on equipment type, size, capacity, and the manufacturer's productivity factor for each specific piece of equipment. This analysis illustrates the type of detailed, site-specific information required to provide realistic estimates of reclamation and closure costs that stands in marked contrast to EPA's simplistic and one-size-fits FR Model." September 16, 2016 Pershing Gold Letter, p. 6.

proposed approach would be more appropriate for an insurance-type system where money may be pooled, but not when individual mines must obtain bonding independently.

A. The Formula Depends on Small Samples with Data Quality and Data Interpretation Issues

The formula is derived from an analysis of the reclamation and closure plans of 63 currently operating or proposed facilities. However, the proposed formula uses thirteen subformulas derived from regression analysis where sample sizes are often much smaller than 63. The majority of the regressions have samples with 50 percent or fewer of these 63 mines. For many regressions, a key variable is based upon less than 6 mines. Small sample sizes in general harm the robustness of regression analyses. Specifically, in this instance, small sample sizes create two large concerns: potential influence points (i.e. outliers) and the effect of data quality issues.

First, Advocacy is concerned about potential outliers or influence points within the data that may hurt the validity of the formula. Peer reviewers have also highlighted this issue.³³ In its response, EPA identified potential influence points in almost every subformula. These influence points may be unduly altering the formula causing a much higher, or lower, financial assurance value. With so many influence points, it is difficult to have confidence in the internal validity of the formula.

For example, in the case of the open pit cost category, the cost of the Historic Phoenix mine is a strong outlier. The Historic Phoenix mine open pit cost is \$153,000/acre, which is far higher than the median cost in this category of only \$1,600/acre.³⁴ EPA's test to identify influence points confirmed this mine's dramatic effect on the Open Pit's final subformula. One reviewer cited this example stating that Phoenix had "huge" response costs - \$223 million was due to the company's mine closure plan that includes backfilling the pit.³⁵ The reviewer suggested that EPA include an additional variable in the regression analysis for sites where expensive backfilling measures are not a requirement or part of the closure plan. EPA's failure to separately account for this factor in the regression greatly inflated this category, which accounts for one of the three largest response costs of the thirteen categories. Similar anomalies are found in the two other costly categories – the waste rock and heap dump response categories.³⁶

Second, due to the small sample size, issues with data quality would also be magnified. Errors in data interpretation or transcription could create a large deviation in the predicted costs. One peer reviewer evaluated a limited sample of data from four mines and could not replicate the proposal's cost/acre allocations from the reclamation and closure plans.³⁷ EPA in its response

³³ Response to Peer Review Comments: CERCLA 108(b) Financial Responsibility Formula for Hardrock Mining Facilities Background Document December 2016; Chapter 4 Response Component Regression Analysis.

³⁴ Formula Background Document, Table G.1, Open Pit Data.

³⁵ Reviewer #4, p. 5.

³⁶ Response to Peer Review Comments: CERCLA 108(b) Financial Responsibility Formula for Hardrock Mining Facilities Background Document December 2016; Chapter 4 Response Component Regression Analysis

³⁷ Reviewer #4, pp. 4-5.

agreed with the reviewer in some instances and promised to alter their allocations in the final analysis.³⁸

However, this peer reviewer only evaluated four mines and only a few response categories of these mines. Based on these observations, the reviewer and Advocacy believe that a full review of every mine would uncover many more errors.³⁹ Even without errors, due to the complexity of these plans and unique site features, significant professional judgment must be used. Therefore, different experts most likely would allocate the reclamation and closure plan costs differently. EPA needs to take additional care when using professional judgment.

The data quality issue can introduce more problematic modeling errors due to the small sample sizes of these regressions. A few mines whose cost allocations or source control tags⁴⁰ are incorrect or disputed can cause the final regressions to change dramatically. This would result in very different financial assurance amounts for mines from what are currently proposed.

B. Resulting Financial Assurance Values are not Verified for Reasonable Accuracy

The proposed formula creates financial assurance amounts for individual mines that were not checked or tested for reasonableness. The predictions must provide reasonable accuracy in order to achieve the statutory purpose of protecting the environment. EPA established a data quality control target for the response cost estimate derived from their formula, revealed only to the peer reviewers, which was no more than double and no less than half of the expected values.⁴¹ However, this data quality standard was not used in the supporting documentation to this rule.⁴²

Before applying the proposal's source control reductions, almost half of the mines identified by EPA would require over \$250 million in financial assurance from only the response aspect of the formula.⁴³ A few mines would calculate their potential financial assurance as over \$1 billion.⁴⁴ These figures are far higher than the response costs found in the reclamation and closure plans used by EPA to develop the formula. While the cost of a CERCLA response may be higher than the costs for a conventional closure, EPA does not evaluate whether its formula creates an appropriate estimate. EPA needs to apply the data quality standard it has established for the methodology.

³⁸ Response to Peer Review Comments: CERCLA 108(b) Financial Responsibility Formula for Hardrock Mining Facilities Background Document December 2016; Chapter 6

³⁹ Reviewer #4, pp. 4, 5 and 9.

⁴⁰ Source control tags means describing the engineering measures taken to limit potentially harmful releases of hazardous substances.

⁴¹ Reviewer #4, pp. 1 and 7.

⁴² Id.

⁴³ Regulatory Impact Analysis, Appendix B. The response costs addressing remedial actions alone are separate from the two other cost categories included in the EPA rule: Natural Resources Damages and Health Assessment costs.

⁴⁴ Id.

C. Costs of Financial Assurance Are Too High for Small Mines

As demonstrated by the six examples in Table I in the Appendix, the EPA formula creates vastly higher response costs than the estimated reclamation and closure costs, often by one or two orders of magnitude.⁴⁵ This can be devastating to small mines. As an example, the Hycroft Mine is owned by a small business that just emerged from a Chapter 11 reorganization last year. Raising its financial assurance requirements from under \$20 million to over \$500 million would be very problematic. Further, based on input from the SERs and state programs, Advocacy has much greater confidence in the accuracy of the expert driven site-specific financial assurance amounts than the estimates derived from EPA simplified nationwide formula.

While the model tries to appropriately estimate the proper financial responsibility for mines, Advocacy is concerned that it is a blunt instrument that will result in very large and unreasonable figures for smaller mines. Based on EPA's own analysis in the Regulatory Impact Analysis (RIA), with costs of many small mines exceeding three percent of sales, these costs could well undermine the viability of these small firms, and impede the development of future mine projects. This is especially troubling, given the minimal justification for requiring any financial assurance for these modern mines.

D. The Peer Review Had Significant Flaws and Did Not Precede Development of the Proposal

EPA began a peer review of their formula methodology in conjunction with this rulemaking, but completed it barely before the proposal was signed. The agency's nonpublic peer review consisted of four individuals with variable experience in hardrock mining and statistics. This peer review appears to have significant flaws. In their comments, three of the peer reviewers expressed confusion about what EPA was attempting to do, the data used in the regression analysis and the purpose of other data included in the peer review record. They also appeared uncertain about the final result of the formula and its significance. Only one of the four peer reviewers managed to provide detailed comments on the formula, and this reviewer was highly critical of the approach.⁴⁶ As discussed further below, the peer review material was incomplete, and should have been the subject of a public, not private, peer review. Most importantly, due to the ill-timing of the review, EPA was unable to take the opportunity to improve the methodology as a result of the peer review comments that it did receive.

First, and critically, EPA failed to provide the final results of the model to the peer reviewers to compare with the associated reclamation and closure costs (see Appendix J of the Background Document), which was the source of great confusion for most of the reviewers. Instead, EPA only presented the reviewers with the figures for the initial calculations, before two very large adjustment factors were applied, which vastly inflated the costs.⁴⁷ One peer reviewer (number

⁴⁵ The mines selected were presented to the SERs during the Panel Process. "Reported" values were obtained from the source document without inflation or regional adjustment. "Formula" values were obtained from the slides presented to the SERs. Advocacy calculated the net present value of the Reported O&M and Water Treatment costs using the methodology EPA describes in the Formula Background Document pages 4-18 to 4-21.

⁴⁶ Peer review comments found in Hardrock Mining Peer Review – Combined Documents; Reviewer #4, pp. 4-9.

⁴⁷ Adjustments were made by using a "smearing factor" and a "source control assumption." See details in the Formula Background Document, sections 4.1, 4.2 and 4.4.

3), stated “I got lost several times, despite the fact that I was taking notes while reading the report, and in some places I just cannot follow the logic of the Agency.” More troubling the same peer reviewer stated, “Which dataset was used to run the regressions? I thought it was the one in 2) the first time I read the report, 5) the second time, and I had literally no idea the third time around. Help!” Another reviewer noted that “when looking at the formula, given the logs and powers of 10, it is hard to get an idea of how big the financial responsibility bond will eventually be. After listing the formula, it would be interesting to see what the amount required would be for the average facility.” This reviewer couldn’t comment on the accuracy of the approach.⁴⁸

Second, because the peer review was done late in the rulemaking process, EPA was unable to incorporate any changes to its approach in the proposed rule as a result of the peer review comments. In several passages of the Response to Peer Review Comments, EPA promised to make conforming changes in the final formula documentation when it publishes the final rule.⁴⁹

Third, given that this formula methodology was “highly influential” to this rulemaking, the peer review should have been a public peer review, not a private review by four individuals, of whom only one was able to fully understand the documents.⁵⁰ Public peer reviewers could have performed a much more thorough review, and the results of that peer review could have been incorporated into the proposal.

As a result, EPA should (1) reverify its underlying data, (2) rerun the regressions and (3) obtain a peer review in a public review permitting public comment. Based on the problematic peer review alone, Advocacy believes that the agency should reconsider this approach and the need for this rule, as discussed elsewhere.

E. EPA Did Not Comply with the SBREFA Panel Requirements to Provide Key Information about the Formula Methodology to Small Entity Representatives

As discussed briefly above, key information was not made available to the SERs in this panel process. If the SERs had been given the critical information underlying the formula methodology, the problems presented by EPA’s methodology would have been identified, and possibly cured.

Below are excerpts from the SBREFA panel report, explaining this problem in more detail.

Many of the SERs commented on their perceptions of the adequacy of the SBREFA panel process, and expressed frustration about not being provided a draft version of EPA’s financial responsibility formula. SERs expressed concerns with the regulatory approach, particularly regarding the potential costs of complying with requirements for financial assurance for closure and reclamation as well as CERCLA 108(b) financial responsibility. SERs were not able to provide

⁴⁸ Peer review comments found in Hardrock Mining Peer Review – Combined Documents.

⁴⁹ Response to Peer Review Comments: CERCLA 108(b) Financial Responsibility Formula for Hardrock Mining Facilities Background Document, December 2016.

⁵⁰ See discussion of “highly influential” products in Section 3.2, EPA Peer Review Handbook, Edition #4 (October 2015).

information to the Panel about how significant those potential costs would have been for their specific facilities.

....

Advocacy shares the concerns raised by the SERs. Advocacy believes SERs were not provided the selection criteria for choosing the input mines, the input data used to develop the formula, nor the key elements of the formula. SERs could not estimate the costs of such an approach on their own facilities. Advocacy needed to evaluate these highly technical data and statistical analysis with the aid of the mining experts who had considerable knowledge in this area. In Advocacy's view, the Panel did not get the full opportunity to receive valuable advice and was handicapped in developing the Panel recommendations. Advocacy regrets that the Panel is not able to make more specific recommendations for flexibilities to minimize the impacts on small entities, and particularly on the formula used to calculate financial assurance amounts. In the view of Advocacy, SERs on other panels received more robust information, and those Panel reports reflect more informed advice.

Panel Report, p. 26.

Given the lack of information available to them, SERs were not able to provide specific comments to the Panel about how significant those potential costs would have been for their facilities. Based on the limited information provided to them, the SERs could only conclude that the formula was vastly overpredicting the costs, and that they had no idea why this would occur or be needed. Thus, the SERs could not use their expertise to help EPA fix the formula, which resulted in the highly flawed product contained in the proposal. The statutory purpose of providing informed advice to the agency was frustrated by this nondisclosure of the formula details.

4. EPA Should Allow Credit Reductions for Existing Requirements, Delete Supplemental Engineering Requirements, and Retain the General Performance Standard

EPA properly recognizes that it should provide financial assurance credit for the 13 response categories for mines that already incorporate adequate financial assurance and good engineering plans. The agency proposes to require compliance with 14 pages of engineering standards and compliance with a general performance standard as a condition for receiving financial assurance credit. EPA is now proposing specific numeric requirements such as planning for a 200-year storm event, and reducing net precipitation by 95 percent. These conditions override the site-specific judgment and flexibility employed by the mines, and approved by state and Federal regulators.

These engineering provisions require EPA to employ expert judgment about the mine facilities, and would require second-guessing of the Federal and state mining agency site-specific determinations. Indeed, the agency states elsewhere that it has “policy concerns about overseeing other federal and state programs’ financial responsibility requirements for adequacy,

given other authorities' expertise with mining regulations.”⁵¹ The very premise of using the simplistic formula approach is the avoidance of expert judgment and second-guessing other mining agencies.

In its approach, EPA has overlooked the fact that not all response categories are needed for all mines. These include response categories such as Long Term Operation & Maintenance (O&M) and water treatment. If the mine already meets water quality standards, for example, further water treatment may not be required. EPA needs to provide for full credit for these elements where the mining agency has determined that the financial assurance response category is either not needed at this time, or not needed at all, provided that the agency performs periodic reviews of these determinations. If EPA does not do so, it will be unnecessarily raising the costs on the mining facility. EPA needs to explicitly preserve this flexibility in any final rule.

The mining agencies have their own requirements, their own guidance, and states have their own specific requirements which could easily conflict with the one size fits all requirements. In sum, EPA should make the following changes. The agency should delete these supplemental engineering requirements. The agency, instead, should retain the proposed general performance standard to require practices that would minimize the “degree and duration” of releases of hazardous substances in its place. Finally, EPA should provide flexibility for the deletion of unnecessary response categories.

5. EPA Failed to Comply with the RFA in Failing to Consider Significant Small Business Alternatives Suggested by the SERs; The One EPA Regulatory Alternative Provides No Direct Relief for Affected Small Firms

The Regulatory Flexibility Act (RFA) requires agencies to consider small business regulatory alternatives that address small business impacts for the rules significantly affecting small firms. Those alternatives considered by the agency become part of the Initial Regulatory Flexibility Analysis (IRFA).⁵² However, EPA failed to do so. Instead, the proposed rule includes a regulatory alternative that does not address the significant small entity impacts anticipated by EPA. Under this regulatory alternative, the mine owner/operator could meet EPA's financial assurance responsibility requirement if it is able to pass a proposed financial test. Under this scenario, EPA would allow the owner/operator to self-insure or use a corporate guarantee. Owners or operators unable to qualify for the Option 2 financial test would be required to acquire a third-party instrument or have a trust fund to comply with the rule's financial assurance requirement.

Given their financial standing, small entities did not view this as a viable option for their mines. Without a credit rating, the financial test is unavailable to small firms.⁵³ In fact, SERs noted that most small entities do not have credit ratings, so they will often have to use cash or significant amounts of collateral.⁵⁴ Similarly, other SER commenters noted difficulties that small entities

⁵¹ 82 Fed. Reg. 3388 , 3401 (January 11, 2017).

⁵² 5 U.S.C. 603.

⁵³ Proposed 320.43(a)(1)(i) require at least one-long term credit rating of AAA, AA+, AA, AA-, A+, A, or A- to qualify. No small firm can meet this requirement.

⁵⁴ September 16, 2016 AE&MA letter, p. 12.

experience in obtaining financial assurance instruments, and believe that the costs for 108(b) instruments will be prohibitive for these entities.⁵⁵

Advocacy is concerned that EPA's regulatory alternative will serve to create a competitive advantage for large businesses. Having a financial test available as a compliance option would result in a higher proportion of large businesses than small businesses qualifying to self-insure. This scenario will create a significant cost advantage for large firms relative to small firms, which results in the opposite outcome from that intended by the RFA, which is designed to provide regulatory relief to small businesses.

EPA has failed to include in the Initial Regulatory Flexibility Analysis (IRFA) any small business alternatives that minimize small business impacts. This is very disappointing given that the panel proceedings identified several alternatives that would achieve the statutory purpose, including the option of no regulation, or regulating mines that fall within identified regulatory "gaps." These alternatives are fully discussed in the panel report, and were all but ignored by the agency.⁵⁶ Thus, EPA did not comply with the RFA requirement to identify small business alternatives in the IRFA. The agency should cure this violation by either withdrawing the proposal, or including true regulatory alternatives in any future rulemaking activities.

6. EPA Overestimates Regulatory Benefits; Rule Costs Exceed Benefits

On page ES-14 of the RIA, EPA states the following: "EPA could not monetize all of the rule's benefits due to data limitations. This RIA, however, estimates that the proposed rule would lead to \$511 million to \$527 million in reduced cost to government over 34 years (the period of analysis) by increasing the likelihood that responsible parties would have access to the necessary funds for their CERCLA liabilities."

EPA explains that the \$527 million estimate is based on multiplying EPA's total financial assurance responsibility estimate of \$7,064 million by an assumed firm exit rate (7.5 percent).⁵⁷ The agency also acknowledges that assuming that all bankrupt firms are left with all unpaid CERCLA costs is a high-end estimate, because only a fraction of such firms will have remedial costs, and another portion of those will be paid for in the bankruptcy proceeding.

This approach leads to a vastly overstated estimate of benefits of the proposed rule because of these three major EPA assumptions, all of which inflate the benefits individually:

1. All mines for every firm that goes bankrupt will require response actions to address releases;

⁵⁵ September 16, 2016 Pershing Gold letter, pp. 10-11.

⁵⁶ EPA did not address these regulatory alternatives in the preamble, but did address the "deferral" option. In the rule preamble, EPA discussed several elements of an approach that would defer to robust state and Federal programs under certain conditions. Unfortunately, this discussion is absent in the RFA section of the proposal, and there is little evidence that EPA seriously considered this very important option.

⁵⁷ Exhibit ES-3; "In the baseline, the government is burdened with the CERCLA cost if a responsible party defaults, as no third-party instruments will be in place. For the baseline, the government burden rate is estimated using the firm exit rate derived from the Census Bureau's Business Dynamics Statistics (BDS). This represents a high-end estimate that assumes exiting firms fail to meet any of their CERCLA obligations."

2. All mines that require response actions to address releases will require every one of the actions for which EPA modeled costs in their baseline financial assurance responsibility estimate; and
3. Costs for all modeled response actions will be paid under the CERCLA program (i.e., there will be no other entity, including the firm that had been operating the mine, nor the Federal/state mining authorities directly regulating the mine, that will fund any portion of response costs).

Although EPA did partially acknowledge the high-end bias of the third item above, the agency does not address the concerns in either of the first two. To more realistically estimate the benefits of the proposed rule, EPA needs to incorporate estimates into their analyses that reflect the fact that each of these activities will occur with less than 100 percent frequency. Although information is not readily available to develop estimates of the frequency of occurrence for each of the above activities, Advocacy believes that the following conservative estimates (i.e., actual values are likely to be lower) are more realistic:

1. Proportion of firms that go bankrupt that require at least one response action: 50 percent;
2. Of the above firms, the proportion of EPA's total response cost estimate that will actually be incurred: 50 percent; and
3. Of the above total incurred response action cost, the proportion that is paid via the CERCLA 108(b) program: 10 percent.⁵⁸

Based on these conservative estimates, the estimated benefits of Option 1 of EPA's proposed rule in terms of reduced Government Costs would drop from EPA's \$527 million estimate to \$13.2 million. When compared to 34 years of EPA's estimate of Option 1 annual financial assurance responsibility expenditures (\$171 million/year), the cost/benefit ratio demonstrates the huge inefficiency of EPA's regulatory approach. This comparison is displayed below. This comparison is just another way to appreciate the inappropriateness of this proposal, even if one ignores the flaws in the formula methodology. The EPA scheme, in effect, is a huge transfer between mining firms and the financial assurance industry with comparatively small benefits to the public.⁵⁹

34-Year Costs (millions of 2015\$)	34-Year Benefits* (millions of 2015\$)		Costs/Benefits***	
EPA	EPA	Adjusted	EPA	Adjusted
5,814**	527	13	11	447

* EPA lists the following as non-quantified benefits of the proposed rule: improved efficiency in capital markets due to increased transparency of environmental liabilities; decrease in human and ecosystem exposure to harmful contaminants due to more expeditious site cleanups; and decrease in human and ecosystem exposure to harmful contaminants due to incentivized actions by mining industry to improve environmental performance.

**EPA annual estimate of \$171 million/year x 34 years

***Costs/Benefits calculated using EPA method and adjusted method using conservative values

⁵⁸ These figures were derived from the SC&A Task 4 memo, draft dated January 12, 2017, based on professional engineering judgment.

⁵⁹ In Table ES-4 of the RIA, EPA estimates that the majority of the costs (\$127 of \$171 million) is a transfer between the mining industry and the financial industry.

Conclusion

EPA is proposing a rule that would cost \$171 million annually by its own estimate, to address risks that are already addressed by state and Federal agencies. Given the minimal remaining risks, the statute does not require any regulation under CERCLA 108(b) to address the hardrock mining industry. EPA also greatly overstates the benefits of this rulemaking by failing to incorporate valid estimates of the incremental impact of the proposed rule. When properly evaluated, the costs of the proposed action far outweigh the benefits.

The historical record does not support a determination of risk levels requiring new Federal involvement, especially when EPA has not refuted the assertion that certain regulatory programs provide coverage of the same response actions that EPA plans to cover (e.g., state and Federal mining regulations). Given the lack of evidence for substantial risks, a more reasonable approach is for EPA to focus on reducing any identified residual risks within the current regulatory framework rather than promulgating a new set of EPA-specific financial assurance requirements.

Advocacy urges EPA to give full consideration to the above issues and recommendations. Advocacy is prepared to work with EPA on these issues and would welcome the opportunity to engage in broader consultations on these issues.

If you have any questions or require additional information please contact me or Assistant Chief Counsel Kevin Bromberg (202) 205-6964 or by email at kevin.bromberg@sba.gov.

Sincerely,

/s/

The Honorable Darryl L. DePriest
Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: The Honorable Howard Shelanski
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

APPENDIX:

Table I: Six Mines - Actual Costs from Source Documents vs Modeled Costs from Formula

Mine 5 Nixon Fork Alaska		
Category	Reported	Formula
Waste Rock	100,000	1,320,000
Tailings	420,000	1,690,000
Underground Mine	56,000	200,000
Drainage	Missing	130,000
Interim O&M	4,355,000	19,540,000
Water Treatment	Missing	67,000
Short Term O&M	64,000	500,000
Long Term O&M	Missing	46,000

Mine 60 Lisbon Valley Utah		
Category	Reported	Formula
Open Pit	156,000	12,610,000
Waste Rock	1,130,000	26,080,000
Drainage	21,000	1,040,000
Interim O&M	4,605,000	44,600,000
Water Treatment	Missing	2,700,000
Short Term O&M	749,000	1,970,000
Long Term O&M	missing	3,840,000

Mine 12 Johnson Camp Arizona		
Category	Reported	Formula
Open Pit	30,000	18,830,000
Waste Rock	339,000	13,100,000
Heap Dump Leach	812,000	31,570,000
Drainage	missing	1,020,000
Interim O&M	missing	24,630,000
Water Treatment	missing	2,690,000
Short Term O&M	missing	1,940,000
Long Term O&M	missing	3,740,000

Mine 27 Idaho Cobalt		
Category	Reported	Formula
Process Pond	235,000	240,000
Tailings	5,400,000	4,030,000
Drainage	Missing	210,000
Interim O&M	23,389,000	11,380,000
Water Treatment	632,000	130,000
Short Term O&M	2,744,000	680,000
Long Term O&M	missing	750,000

Mine 42 Hycroft Nevada		
Category	Reported	Formula
Open Pit	77,000	197,900,000
Waste Rock	3,567,000	76,790,000
Heap Dump Leach	4,128,000	118,200,000
Process Pond	1,000,000	1,890,000
Drainage	331,000	2,900,000
Interim O&M	95,640,000	69,130,000
Water Treatment	Missing	14,050,000
Short Term O&M	2,385,0000	3,930,000
Long Term O&M	missing	11,050,000

Mine 53 Standard Mine Nevada		
Category	Reported	Formula
Open Pit	27,000	4,440,000
Waste Rock	524,000	12,390,000
Heap Dump Leach	2800,000	11,180,000
Process Pond	228,000	170,000
Drainage	3,000	670,000
Interim O&M	16,600,000	35,790,000
Water Treatment	Missing	1,090,000
Short Term O&M	722,000	1,460,000
Long Term O&M	Missing	2,420,000

To: kevin.bromberg@sba.gov[kevin.bromberg@sba.gov]; Brown, Byron[brown.byron@epa.gov]
Cc: Sugiyama, George[sugiyama.george@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]
From: Schnare, David
Sent: Thur 3/9/2017 7:47:41 PM
Subject: RE: Hard Rock Mining Meeting

Kevin:

Byron has the lead on OLEM issues and you should contact him directly, as necessary.

dschnare

From: Bromberg, Kevin L. [mailto:kevin.bromberg@sba.gov]
Sent: Thursday, March 9, 2017 2:33 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Sugiyama, George <sugiyama.george@epa.gov>; Kreutzer, David <kreutzer.david@epa.gov>
Subject: Hard Rock Mining Meeting

My meeting (accompanied by our economist, Michael McManus) is scheduled for Tuesday April 21 at 11 AM with Barry Breen, and presumably OLEM staff. You asked me to tell you so that you could send someone to attend. Charley Maresca, the Director for Interagency Affairs and me are also meeting with Samantha Dravis on the following day to address this and other issues (SBREFA panel procedures and regulatory reform).

At this meeting with OLEM, I'd like to discuss our comment letter, EPA's preliminary response to this letter, and EPA's plans to work on this rulemaking during the 120 day comment period extension. Deliberative Process Privilege/Ex. 5 We also could briefly address 108(b) and the three "other" industries.

David, who is being assigned to this issue within the transition team (and possibly OP?)

George, I thought I'd copy you on this note since this issue is of major significance. Feel free to contact me.

Kevin

📍 Kevin Bromberg

Assistant Chief Counsel for Environmental Policy

📍 SBA // Office of Advocacy

409 3rd St. SW, Washington, D.C. 20416

✉ kevin.bromberg@sba.gov 📞 202.481.2963

📄 Personal Matters/Ex. 6



To: Ericksen, Doug[ericksen.doug@epa.gov]
Cc: Kreutzer, David[kreutzer.david@epa.gov]
From: Schnare, David
Sent: Tue 3/14/2017 3:54:04 PM
Subject: Re: Non-EPA response team

Why ? Pruitt has not taken ownership of the issue as best I can tell. Or do you know something I don't?

d

Sent from my iPhone

On Mar 14, 2017, at 11:52 AM, Ericksen, Doug <ericksen.doug@epa.gov> wrote:

David and David,

As your time allows I would like to sit down with you to put together a list of scientists and professionals who can provide balance to the climate change CO2 conversation.

We can discuss more in person.

Doug Ericksen

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]
From: Benton, Donald
Sent: Mon 3/6/2017 11:26:00 PM
Subject: Climate Crusade Cash

FYI- This is something we need to look in to.

It has been reported that this company is NOT an independent researcher and that the Obama Administration issued them several contracts for studies on Climate Change.

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: stevescare[Personal email/Ex. 6]
Sent: Saturday, March 4, 2017 11:38 AM
To: stevescare[Personal email/Ex. 6] Donald <benton.donald@epa.gov>
Subject: Plus \$\$---Re: Climate Crusade Cash

Multiple federal contracts for ICF

<https://www.icf.com/news>

<https://www.icf.com/news/2017/01/ntis-selects-icf-as-industry-partner-for-data-innovation>

In a recent press release, U.S. Secretary of Commerce Penny Pritzker describes these partnerships as an opportunity to “unlock new federal data that will leverage advances in data science, promote software development and

accelerate innovation.”

Subject: Climate Crusade Cash

In fighting climate change and oil dependence, California needs all its tools

<http://www.sacbee.com/opinion/op-ed/soapbox/article136059388.html>

"A new study from independent global consulting firm ICF shows that increasing the Low Carbon Fuel Standard targets doesn't just cut emissions from fuels directly; it also eases compliance costs on the cap-and-trade side."

The authors do not share the study but the firm ICF is well connected \$\$\$\$

In exchange for being so helpful ICF is rewarded handsomely.

EPA Office of Water Selects ICF for \$12 Million Human Health Risk Assessment Contract

Read more here: <http://www.sacbee.com/opinion/op-ed/soapbox/article136059388.html#storylink=cpy>

THE SACRAMENTO BEE-RECORD

THE SACRAMENTO BEE-RECORD

THE SACRAMENTO BEE-RECORD

THE SACRAMENTO BEE-RECORD

THE SACRAMENTO BEE-RECORD

THE SACRAMENTO BEE-RECORD

THE SACRAMENTO BEE-RECORD

To: Schnare, David[schnare.david@epa.gov]
Cc: Pruitt, Scott[Pruitt.Scott@epa.gov]
From: Kreutzer, David
Sent: Tue 2/21/2017 4:19:48 PM
Subject: ADA support for FR Publication
[ADA memo.docx](#)

David,

Attached is a memo explaining the ADA's support for publishing the Amalgam Separator Rule in the Federal Register.

Please, let me know if you have any questions.

David

David W. Kreutzer, Ph.D.

202.564.3113

IMPORTANT: Please note that any correspondence with this account may become a federal record and be subject to Freedom of Information Act (FOIA) requests.

memo

To: David Schnare
From: Kreutzer, David
CC: Administrator Pruitt
Date: February 21, 2017
Re: Amalgam Separator Rule and the ADA

Effluent Limitations Guidelines and Standards for the Dental Category is a final rule that is currently in the queue for publication in the Federal Register. It establishes a technology-based standard for limiting the discharge of mercury and other metals from existing and new dental practices. In essence, it requires the use of existing technology to divert amalgam from the waste-water stream of dental offices.

The Federal Register notice indicates that the rule aligned with the recommended practices of the American Dental Association (ADA). Under the assumption that the group most harmed by the rule would be the members of the ADA, I contacted the ADA to see if they were opposed or in favor. If they had no opposition, then significant opposition anywhere would be unlikely.

I spoke with Jeff Troupe, Senior Legislative Liaison at the ADA headquarters in Chicago, and with the ADA's representatives in DC, Jerry Bowman and Robert Burns. They said that though the original version of the rule was very problematic, the EPA worked with them to come up with an acceptable version. They indicated that the ADA would like the final rule to be published as is.

To: Schnare, David[schnare.david@epa.gov]
From: Kreutzer, David
Sent: Mon 3/13/2017 3:52:50 PM
Subject: FW: LNT dose response

Talked with Al McGartland about LNT research and he said they could probably have Cox *OR* Calabrese give a talk to the econ group but that LNT is really the province of ORD. So, I contacted Bruce, Assoc Dir for Science. Here's what I got.

Deliberative Process Privilege/Ex. 5

David

From: Rodan, Bruce
Sent: Friday, March 10, 2017 6:17 PM
To: Kreutzer, David <kreutzer.david@epa.gov>
Cc: Kavlock, Robert <Kavlock.Robert@epa.gov>
Subject: RE: LNT dose response

Dr. Kreutzer,

Hi. I asked our ORD Laboratories/Centers to check on your question regarding whether EPA is conducting research on Linear Non-Threshold dose-response. Some of the details are bulleted below, but I thought it would be useful to start by placing dose-response (D-R) issues in context. D-R considerations are central to many of the decisions made by EPA, where evaluating the potential for effects at low exposures to potentially millions of Americans becomes a primary public health consideration—and where these evaluations are usually conducted within the statistical noise of any available data. This very low-dose region is where data, mechanistic knowledge, and assumptions inform decisions regarding the shape of the dose-response curve – is the D-R likely to be linear from zero exposure, linear but only after a threshold dose has been

exceeded, following some other D-R mathematical function, or non-monotonic (e.g., bi-phasic)? The Linear No-Threshold model is used where it is assumed that damage is directly proportional (linear) to the dose of the chemical at all dose levels. Currently:

- ORD is not conducting research specifically on the linear no-threshold dose response hypothesis
- EPA is currently funding a National Academies of Science study to develop a strategy for evaluating whether EPA's current regulatory toxicity tests are designed appropriately to capture any low-dose effects for endocrine disruptors, entitled: *"Unraveling Low Dose Toxicity: Case Studies of Systematic Review of Evidence."* (Abstract appended*)
- Since dose-response is a such a major component of toxicology and risk assessment, many of ORD's studies and assessments include one or more of the following D-R components:
 - Evaluation of the way a chemical causes an effect (i.e., mode-of-action) as a function of dose or concentration of chemical;
 - Computational models investigating tipping points, meaning the point at which the biological effect of the chemical can be considered negative or adverse;
 - Toxicokinetic (how a chemical is absorbed, distributed, metabolized, and excreted) modeling which allows the data to govern the shape of the dose-response curve—be it linear or nonlinear—at doses down to zero.
- We also maintain a suite of dose-response models and continue to advance the state of the science with modeling approaches.
- ORD does not conduct radiation research—if you need more information, we would be happy to follow-up with Bill Long who is the Director of the Center for Radon and Air Toxics in the Indoor Environments Division in OAR.

**Unraveling Low Dose Toxicity: Case Studies of Systematic Review of Evidence*

Board on Environmental Studies and Toxicology

<http://dels.nas.edu/Study-In-Progress/Unraveling-Dose-Toxicity-Case-Studies/DELS-BEST-14-07>

Statement of Task

“An ad hoc committee under the auspices of the National Research Council (NRC) will develop a strategy for evaluating whether EPA's current regulatory toxicity-testing practices allow for adequate consideration of evidence of low-dose adverse human effects that act through an endocrine-mediated pathway. The study will include a scientific workshop to support the conduct of systematic reviews of human and animal toxicology data for two or more chemicals that affect the estrogen or androgen system. The workshop will seek to identify examples of

relevant chemicals, populations/model systems, and end points of interest for further study using systematic-review methods. Systematic reviews for these chemicals/populations/end points for human and animal data streams will be performed under the direction of the committee. The committee will evaluate the results of the systematic reviews, demonstrate how human and animal data streams can be integrated, determine whether the evidence supports a likely causal association, and evaluate the nature and relevance of the dose-response relationship(s). The committee will consider how to use adverse outcome pathway (AOP) or other mechanistic data, including high-throughput data and pharmacokinetic information, to elucidate under what circumstances human and animal data may be concordant or discordant.”

Hoping this is helpful, and happy to clarify any questions.

Bruce Rodan

Associate Director for Science

EPA Office of Research and Development

From: Kreutzer, David
Sent: Thursday, March 9, 2017 5:18 PM
To: Rodan, Bruce <rodan.bruce@epa.gov>
Subject: LNT dose response

Bruce,

Has there been any recent EPA research on Linear No-Threshold dose response hypothesis—either broadly or for specific chemicals/radiation?

David

David W. Kreutzer, Ph.D.

202.564.3113

IMPORTANT: Please note that any correspondence with this account may become a federal record and be subject to Freedom of Information Act (FOIA) requests.

Bcc: Benton, Donald[benton.donald@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Schnare, David[schnare.david@epa.gov]
To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Kreutzer, David
Sent: Fri 3/3/2017 3:15:57 PM
Subject: Fwd: OITA Weekly Report

Ryan,

The first item in the list below (SOI with the World Bank) raises a red flag. The email doesn't say anything about climate/CO2, but since this was all done in the McCarthy EPA, I'd be very surprised if there weren't CO2 targets of some sort.

I'll ask for a copy of the SOI and give it a look.

David

Sent from my iPhone

Begin forwarded message:

From: "Nishida, Jane" <Nishida.Jane@epa.gov>
Date: March 3, 2017 at 8:10:24 AM EST
To: "Kreutzer, David" <kreutzer.david@epa.gov>
Subject: FW: OITA Weekly Report

David,

I just found out that you are not on the Weekly Report Group list, so I will copy you in the future.

Jane

From: Nishida, Jane
Sent: Thursday, March 02, 2017 4:28 PM
To: Weekly Report Group <Weekly_Report_Group@epa.gov>

Subject: OITA Weekly Report

Action Items (Including Hot Issues and Important Deadlines)

EPA - World Bank Cooperation: OITA seeks approval to sign a Statement of Intent (SOI) between EPA and the World Bank to cooperate on environmental issues that are shared priorities.

- Priority areas include air quality management, reducing mercury in artisanal and small-scale gold mining, enacting lead paint laws consistent with the U.S. standard, and promoting environmental governance.
- The SOI is a voluntary arrangement between EPA and the World Bank that expresses the good faith intentions of the Parties to cooperate on priority areas and does not create any contractual obligations.
- The SOI has been reviewed by all the relevant EPA offices and OGC, and the World Bank is ready to sign the document.

Upcoming Engagements (Including Major Public Events)

G7 Environment Ministers Meeting: The Administrator has received a formal invitation letter from the Italian Minister of Environment to participate in the G7 Environment Ministers Meeting in Bologna, Italy, on June 11-12.

- Italy will also be organizing two side events, one focused on the role of universities/research centers in sustainable development and the second focused on the contribution of firms to the 2030 Agenda on Sustainable Development.
- OITA represented EPA at the first Policy Coordination Committee (PCC) meeting convened by the National Security Staff to prepare for the G7 and G20 Leader's Summits, in May and June respectively, that the President is expected to attend.
- The PCC reviewed the issues on the G7 and G20 agenda - the EPA related agenda items include food waste as a part of the food security dialogue, and resource efficiency and marine litter in coordination with the State Department. The Sub-PCC on Climate and Energy is also looking at oil and gas infrastructure, energy efficiency, and fossil fuel subsidies.

National Tribal Caucus Meeting: The Executive Officers of the National Tribal Caucus (NTC) will be holding a conference call with ECOS Executive Officers on March 3.

- NTC and ECOS call builds on the emerging partnership between state and tribal governments to cooperate on environmental issues such as emergency response and solid waste management.
- NTC Chair is planning to attend the ECOS meeting in April and would like to schedule an introductory meeting with the Administrator while he is in DC.
- NTC is also working on collecting and consolidating tribal budget needs, including tribal infrastructure needs, and updating the NTC transition document for the new EPA leadership team.

Past week accomplishments (Good News Stories)

EPA Assists the US-Brazil Business Council: OITA met with representatives from the US-Brazil Business Council which is interested in finding ways to reduce barriers to US private investment in Brazil.

- The Council is interested in helping the Brazilian Government's process to reform its EIA and licensing procedures which the Council's membership view as overly burdensome, time-consuming, and uncoordinated.
- The Council was particularly interested in support that EPA has provided to Central America countries on EIA issues under the Central American Free Trade Agreement Program (CAFTA).
- They think the "Technical Review Guidelines for Environmental Impact Assessments in the Tourism, Energy and Mining Sectors" that EPA developed under CAFTA would be particularly helpful in Brazil and plan to follow up with the US Embassy in Brasilia.

To: Schnare, David[schnare.david@epa.gov]
From: Kreutzer, David
Sent: Thur 3/16/2017 10:03:33 PM
Subject: □

Totally bummed out. Not totally surprised.

Wish you the very best. Who knows what's in store here for me.

David

Sent from my iPhone

From: Schnare, David
Location: 3330
Importance: Normal
Subject: National HQ & RG 1st Assistants VTC - DCRoomARN3330/DC-AR-OARM
Start Date/Time: Tue 3/21/2017 4:00:00 PM
End Date/Time: Tue 3/21/2017 4:30:00 PM

From: Sharma, Prianka P.
Location: Advo Conference Room
Importance: High
Subject: Canceled: The Future of Environmental Law Under the Trump Administration (Webinar)
Categories: EZ Record - Shared
Start Date/Time: Mon 3/13/2017 9:30:00 PM
End Date/Time: Mon 3/13/2017 11:30:00 PM

;

Program Overview:

Dr. David Schnare, who was part of President-elect Trump's EPA Transition Landing Team, headlines a distinguished panel of experts to discuss the Trump Administration's environmental law agenda at an EBA Energizer on **March 13 from 5:30pm to 7:30pm** at Hogan Lovells US LLP in Washington, DC. Panelists will focus particularly on the impact of environmental laws on the energy sector. Rep. Dr. Schnare will be joined by Matt Kellogg, senior policy advisor and counsel to U.S. House Majority Leader Kevin McCarthy, and Richard Alonso, a partner with Bracewell LLP. Justin Savage, a partner with Hogan Lovells will moderate the event. This program is presented by the EBA's Environmental Regulation Committee.

Thanks to our Sponsor:

Hosted By: *Hogan Lovells US LLP*

Moderator:

Justin Savage, Partner, *Hogan Lovells US LLP*

Panelists:

Richard Alonso, Partner, *Bracewell LLP*

Matthew Kellogg, Senior Policy Advisor & Counsel, House Majority Leader Kevin McCarthy, *U.S. House of Representatives*

Dr. David Schnare, Esq., Ph.D, *Environmental Protection Agency (EPA) Transition Team and Landing Team*

From: Schnare, David
Location: Rayburn 2321
Importance: Normal
Subject: IRIS Joe Brazauskas 202-225-6371
Start Date/Time: Thur 3/16/2017 2:00:00 PM
End Date/Time: Thur 3/16/2017 3:30:00 PM

From: Willis, Sharnett
Importance: Normal
Subject: ECOS Workshop
Start Date/Time: Thur 4/6/2017 4:00:00 AM
End Date/Time: Sat 4/8/2017 4:00:00 AM

From: Willis, Sharnett
Importance: Normal
Subject: Sharnett's Compressed Day
Start Date/Time: Mon 3/13/2017 4:00:00 AM
End Date/Time: Tue 3/14/2017 4:00:00 AM

From: Schnare, David
Importance: Normal
Subject: Sarvadi
Start Date/Time: Wed 3/15/2017 3:00:00 PM
End Date/Time: Wed 3/15/2017 4:00:00 PM

From: Schnare, David
Location: O'Neill House Office Building. Wes Gwinn, 202.225.7749
Importance: Normal
Subject: Gold King Mine
Start Date/Time: Fri 3/10/2017 2:00:00 PM
End Date/Time: Fri 3/10/2017 3:00:00 PM

From: Schnare, David
Importance: Normal
Subject: Falls cHURCH
Start Date/Time: Thur 3/9/2017 1:00:00 PM
End Date/Time: Thur 3/9/2017 4:00:00 PM

From: Schnare, David
Importance: Normal
Subject: Cleland Hamnet
Start Date/Time: Wed 3/8/2017 7:30:00 PM
End Date/Time: Wed 3/8/2017 8:30:00 PM

From: Schnare, David
Importance: Normal
Subject: Jon Speri - CBO
Start Date/Time: Wed 3/8/2017 3:00:00 PM
End Date/Time: Wed 3/8/2017 3:30:00 PM

From: Schnare, David
Location: Pentagon City
Importance: Normal
Subject: Craig Richardson
Start Date/Time: Wed 3/8/2017 10:30:00 PM
End Date/Time: Thur 3/9/2017 12:30:00 AM

From: Coleman, Sam
Importance: Normal
Subject: Call with HQ
Start Date/Time: Mon 3/6/2017 9:30:00 PM
End Date/Time: Mon 3/6/2017 10:00:00 PM

From: Schnare, David
Importance: Normal
Subject: NEDA
Start Date/Time: Thur 3/23/2017 2:00:00 PM
End Date/Time: Thur 3/23/2017 5:00:00 PM

From: Dunham, Sarah

Location: WJC-N 5400 + Video with RTP +

Non-responsive Conference Code/Ex.6

Importance: Normal

Subject: Regional Haze

Start Date/Time: Fri 3/3/2017 9:00:00 PM

End Date/Time: Fri 3/3/2017 9:30:00 PM

To: Dunham, Sarah; Lewis, Josh; Page, Steve; Koerber, Mike; Schnare, David; Richardson, RobinH; Schmidt, Lorie; Zenick, Elliott

From: Jackson, Ryan
Location: 3402 WJC-N
Importance: Normal
Subject: Discussion on facilities in Las Vegas with Donna V.
Start Date/Time: Fri 3/3/2017 8:00:00 PM
End Date/Time: Fri 3/3/2017 8:30:00 PM
LV Talkers03022017v2.docx

Las Vegas – EPA Lab Talking Points

Background:

The FY 2015 Omnibus Consolidated and Further Continuing Appropriations Act provides \$7.85M for the design and engineering plans for a new research facility as described in the budget request.

- EPA occupied several leased facilities in Las Vegas supporting the activities of both laboratory and administrative activities.
- EPA has extended the leases to 2020 – would have allowed for the necessary construction of the consolidated facility and the Environmental Due Diligence (EDDP) efforts to clean up the UNLV lab.
- EPA released 2.5 buildings at the end of Oct. 2016
- EPA engaged GSA at multiple levels to assist/lead on the identification of suitable land to construct. A sources sought notification was never issued by GSA.
- In April 2015, the EPA's master planning contractor delivered the updated Program of Requirements (POR) and budget estimates for a consolidated building requirements. The budget estimate was within 5 percent of the original estimate.
- In the absence of a suitable location to build, the design was halted. This action preserved ~\$7M of the earmarked B&F funds.
- The estimated cost for the consolidated LV lab was between \$87 - \$93M (difference between EPA and GSA estimates)

Issues:

- EPA worked with GSA R9 to identify a suitable location to site the building.
 - GSA would not consider a lease construct option because Congress, having funded design, appears to be a federally funded construction project
 - The current leases in LV will expire in 2020. Realistically, EPA would have needed a new location by 2018 to be able to complete the EDDP on the remaining UNLV lab space.
- In the absence of a decision, ORD & OAR have made arrangements to shift lab work to existing EPA locations.
- EPA is completing the POR for the La Plaza administrative complex – supporting non-lab functions currently residing in LV. Determination will be made in the next few weeks as to whether this will require above prospectus (congressional) coordination.
- Remaining B&F dollars earmarked for this project should be used to support lab consolidation efforts at other locations.

From: Schnare, David
Location: 555 14th St. NW Washington DC
Importance: Normal
Subject: Hogan-Lovell - Trump energy litigation
Start Date/Time: Mon 3/13/2017 9:30:00 PM
End Date/Time: Mon 3/13/2017 11:30:00 PM

Conference room 12.106/107

From: Schnare, David
Importance: Normal
Subject: Miller dinner
Start Date/Time: Thur 3/9/2017 11:00:00 PM
End Date/Time: Thur 3/9/2017 11:30:00 PM

From: Williams, Michael B. EOP/OMB
Location: Call-in
Importance: Normal
Subject: EPA Reg Review Call
Start Date/Time: Fri 3/3/2017 7:00:00 PM
End Date/Time: Fri 3/3/2017 8:00:00 PM

;

Call-in details:

Non-responsive Conference Code/Ex.6

From: Flynn, Mike
Location: WJC-N 3402
Importance: Normal
Subject: Discussion on SES
Start Date/Time: Fri 3/3/2017 8:30:00 PM
End Date/Time: Fri 3/3/2017 9:00:00 PM
[PENDING SES INFO Mar 1.docx](#)
[SES CDP One Pager.final.docx](#)
[Senior Executive Service Hiring issues.docx](#)

Sct: Tamika Burton, 564-4711

Senior Executive Service Candidate Development Program

The Environmental Protection Agency has approximately 280 career Senior Executive Service positions. The annual attrition rate for the SES is about 25 per year. Therefore, the EPA is constantly recruiting for and filling these senior leadership positions. In addition, about three fourths of its SES corps is eligible for retirement within the next five years. EPA has been developing a cadre of future senior leaders to fill these positions and the SES Candidate Development Program is an excellent way to prepare high-performing employees for these leadership positions. This program also advances the goal of a corporate SES by developing a cadre of career executives who share a government-wide perspective and are well positioned to lead change both within their agencies and throughout government. About two years ago, the EPA ran a SESCO in partnership with the Department of Treasury with about 26 candidates from within and outside the agency participating in the program. Candidates from that program are still completing program requirements.

Last fall, the EPA announced another SESCO in partnership with the Department of Interior for a 12-month program. The SES CDP was competitively announced on USAJOBS, the Office of Personnel Management's official employment website. Applicants underwent a multifaceted selection process that included an evaluation of their executive core qualifications statements and structured interviews. The current SES corps were valuable participants in the selection process, screening applications and interviewing candidates.

The 25 candidates selected for this SESCO include 17 from within EPA, and eight from other agencies, including the Department of Homeland Security and the Department of the Army. The candidates will now participate in an intensive training program, scheduled to start later this month and designed to develop their leadership competencies. The program will provide a series of developmental experiences including formal courses and seminars, rotational assignments, and an SES mentor. In addition, candidates will participate in seminars to further their understanding of the EPA and its mission, values, and challenges.

Candidates who successfully complete an SESCO need to be certified by OPM. This certification allows them to apply for and be selected for SES positions without further competition. Certification does not make them SES members, and it does not guarantee placement as an SES.

The SESCO is an excellent succession management tool for the agency and we are looking forward to announcing this next class to the agency.

From: Schnare, David
Importance: Normal
Subject: Out of the office
Start Date/Time: Mon 3/6/2017 12:00:00 PM
End Date/Time: Mon 3/6/2017 6:00:00 PM

From: Willis, Sharnett
Location: 3402 WJC-N
Importance: Normal
Subject: Pruitt Day 1 / Week 1
Categories: EZ Record - Shared
Start Date/Time: Fri 2/10/2017 5:15:00 PM
End Date/Time: Fri 2/10/2017 6:00:00 PM

From: Willis, Sharnett
Location: 3412 WJC-N
Importance: Normal
Subject: Pruitt Day 1
Categories: EZ Record - Shared
Start Date/Time: Wed 2/8/2017 7:30:00 PM
End Date/Time: Wed 2/8/2017 8:00:00 PM

From: Willis, Sharnett
Location: 3412 WJC-N
Importance: Normal
Subject: Pruitt Day 1
Categories: EZ Record - Shared
Start Date/Time: Mon 2/6/2017 3:00:00 PM
End Date/Time: Mon 2/6/2017 4:00:00 PM

To: Schnare, David[schnare.david@epa.gov]
From: David Schnare
Sent: Sun 3/12/2017 3:01:39 PM
Subject: Int
Environ. Res. LNT-Obit.-1.pdf

--

David W. Schnare, Esq. Ph.D.



Obituary notice: LNT dead at 89 years, a life in the spotlight



Edward J. Calabrese

Department of Environmental Health Sciences, Morrill I, N344, University of Massachusetts, Amherst, MA 01003, USA

ARTICLE INFO

Keywords:

LNT
Dose response
Risk assessment
Cancer
Hormesis
Environmental regulations

ABSTRACT

Considerable recent findings have revealed that the linear dose response for cancer risk assessment has not only outlived its utility in predicting risk but is based on a flawed scientific foundation. The present article characterizes this demise of a key concept of environmental risk assessment, in the framework of a figurative obituary of a long-lived concept that has poorly served society. This obituary is intended to illustrate an integrated mix of poignant and improper historical judgments that led to both the acceptance and ultimately the demise of this once intellectually facile and nearly universally accepted concept.

1. Introduction

The linear dose-response relationship for carcinogen risk assessment, otherwise known as the linear-no-threshold (nicknamed LNT) model died on January 10, 2017 due to an academic version of multiple system failure. This involved a poor theoretical basis, an incapacity for validation and a rejection by hundreds of studies, along with a striking ineptness for accurate predictions in the low dose zone (Calabrese, 2009, 2011a). Speeding its demise was a recently discovered series of epic scandals involving some of the best and brightest from the worlds of academia and government. Its final demise came with two recent publications in the journal *Environmental Research* (Calabrese, 2017a; Calabrese, 2017b) showing that LNT exhibited several serious academic mutations, which allowed it to be misapplied and to grow unchecked, a process that would ultimately lead to self-destruction. LNT was finally put to rest in a grave outside Washington, DC. The ceremony was surprisingly well attended by numerous inconsolable consultants and governmental regulators who made their economic livelihoods based on the tenets and applications of LNT in cancer risk assessment. The service was presided over by a former head of the US EPA, who had a difficult time keeping her composure, having lost a long time, but fundamentally misunderstood ideology, which harmed nearly everything it touched because of its blind acceptance and unproven character.

1.1. LNT: its life, significance and demise

LNT was always the star of the show, starting with its highly auspicious birth—an event that was heralded by some leaders of science as the key element in explaining life itself as well as the origins of man on earth. In 1928 LNT was born by the creativity of two

physical chemists from no less than the University of California at Berkeley. One of these chemists, Professor Gilbert Lewis, an academic jack-of-all-trades and master of all, himself having been nominated for the Nobel Prize some 42 times, only to be repeatedly overlooked due to human jealousy born of rivalry. Despite his own death on a Saturday afternoon in March 1946 due to an apparent accidental release of cyanide during an experiment, Professor Lewis remains well known to all high school and college chemistry students for his famous Lewis acids and bases concepts. However, Lewis and his colleague Axel Olson decided to leave the comfort of their physical chemistry laboratory and proffer an explanation for a truly big question – how did we get here? Their answer to the evolutionary conundrum, they believed, was to be found in the recently published work of the radiation geneticist Hermann Muller, a professor at the University of Texas at Austin. Muller and many rivals long believed that unlocking the mechanism of evolution was the biggest question in biology and that whoever got there first would take home the Nobel Prize. Muller worked on this question for over 15 years, and then finally closed in on it late in 1926, a scant few months ahead of the competition. As he neared the research finish line in the spring of 1927, Muller used his contacts at the journal *Science* (Muller, 1927) to publish the first report of an exogenous agent, in this case X-rays, capable of producing mutations.

Lewis and Olsen did not hesitate to use Muller's discovery to declare that they had now figured out the mechanism of evolution. The engine of evolution, by their account, resulted from mutations occurring from continuous exposure to low levels of background radiation emanating from the cosmos and terrestrial earth. Their explanation, however, needed and therefore assumed a linear dose-response profile for radiation to insure that mutations could actually occur at background levels. Lewis and Olsen offered this explanation even though Muller's research at the time never revealed the true nature of the dose

E-mail address: edwardo@schoolph.umass.edu.

<http://dx.doi.org/10.1016/j.envres.2017.02.031>

Received 26 January 2017; Received in revised form 21 February 2017; Accepted 24 February 2017
0013-9351/ © 2017 Elsevier Inc. All rights reserved.

response for X-ray-induced mutations at low doses. Their explanation, based on an assumed extrapolation of Muller's dose response curve, was published in a 1928 article in the prestigious journal *Nature* (Olson and Lewis, 1928). Thus, the LNT was born, not in the service of and application for environmental risk assessment, but out of an unproven assumption to answer the most vexing question in life.

Intriguing though it was, the explanation of Lewis and Olson would fail to gain traction, eventually being discredited by Muller himself. Background radiation was so low or weak that it could only explain about 1/1300th the mutation rate in Muller's control group (Muller and Mott-Smith, 1930; Muller, 1930), making the LNT too inept for a plausible explanation. In a strange way, Lewis' mistake was compounded by the failure of Muller to present any data in the *Science* paper, forcing the overzealous Lewis to speculate.

Although Lewis and Olson receded from the messy world of evolutionary biology and their failed attempt to explain the mechanism of evolution was soon forgotten, the LNT model that they had fictionalized was not. In fact, Muller himself adopted it as his own model and he would soon become known as THE stepfather of LNT. A scant two years later Muller would reenergize the LNT concept, rename it, and then transform it into no less than a new universal biological law, calling it the Proportionality Rule (Muller, 1930). The Proportionality Rule, or LNT, was destined to become a central dogma of the radiation geneticist community.

Just as evolution needed a mechanism so did the Proportionality Rule; soon it would get one. The mechanism would emerge from a series of creative forays between big-time physicists and radiation biologists who met in Copenhagen during summers early in the 1930s—the likes of which involved Neils Bohr, Muller, and others with similar high standing. In a type of role reversal the physicists offered a mechanism that linked their concept of radiation target theory to several sets of new data from Muller's laboratory showing a linear dose response for radiation-induced germ cell mutation. The physicists proposed a single gene-single hit model that could reliably predict Muller's linear dose-response observations. The greater the number of gene hits beyond one, the more progressively the dose response resembled a threshold model. This enhanced version of LNT, now called the “single-hit” LNT model surfaced in 1935 in a newly created journal in the German language (Timofeeff-Ressovsky et al., 1935). However, because the journal never saw a second year of publication, the “single-hit” LNT model was never cited in leading scientific indices and spread among colleagues only by word-of-mouth and reprints.

To recount, an article in a prestigious journal literally fictionalized an unproven LNT into existence (born) in order to rationalize an evolutionary hypothesis that would soon be fully discredited by Muller, who surprisingly would then soon adopt the fictionalized LNT as his own after a theoretical physics' article in a short-lived and unknown journal was used to rationalize it back into existence (reborn). Thus, LNT not only was born and died, but, on the belief of one man and the mere musings of physical theory, also was reborn and even given a theoretical and intellectual foundation for the future—all without experimental proof of its existence. In fact, under such circumstances, it would be hard to imagine how the “single hit” version of LNT could have possibly failed. After all, it was surrounded, supported and collectively created by past, present and future Nobel Prize winners in physics and biology. But there was no getting around it, key experiments in support of LNT remained absent and the mutterings of support by prominent scientists would eventually ring hollow, and Muller knew it. Thus, Muller proposed an idea for a seminal experiment to calm the doubters and give LNT standing within the scientific world.

Muller knew that it was probably impossible to prove or validate the LNT in experimental systems. The dose of radiation would be so low that even theoretically small effects would be practically impossible to measure. LNT was, more than anything else, a belief rather than a science. That is, LNT really could not be directly tested. As an

alternative, Muller proposed a dose-rate experiment to see if X-ray-induced mutations would be cumulative and irreversible. If this were the case, then the dose response should be linear even down to a single ionization. So, in the late 1930s Muller directed a project that, in effect, tried to determine whether the same number of mutations would occur when a dose was given all at once or spread over a number of smaller doses. If the amount of damage were the same in each case, LNT would be supported. In this key experiment Muller's scientific intuition proved correct and his belief in the Proportionality Rule or LNT—call it what you will—was sustained, at least for a while. At the time, however, this was an important moment for LNT, “proving” that it was not only real (Muller, 1951) but was also in the process of gaining many new converts from the field of radiation genetics.

Unfortunately, unforeseen problems soon emerged and the vindication of LNT proved to be short lived. Even though radiation geneticists had come to fully embrace LNT, it seems that Muller's dose-rate experiments had some important limitations such as his supervision of students and study design features. In addition, the Atomic Energy Commission was then seeking safety assurances for any personnel of the Manhattan Project who might be exposed to doses of radiation considerably lower than those used by Muller and his students in validating the LNT. In short, the U.S. Government needed to develop a safety program for radiation workers that would be both based on occupationally relevant doses and guided by the very best science. Thus, Muller needed to improve his approach to research on dose rates, this time with a greater degree of supervision, a stronger study design and a better quality control of laboratory procedures.

In concert with the Manhattan Project, a “dream team” of researchers from the fields of entomology and genetics was then organized at the University of Rochester to validate the LNT model at ever-lower doses of radiation. The research project was under the supervision of the outstanding geneticist Curt Stern who received assistance from Muller and other prominent scientists of the day. Anticipating straightforward confirmation of LNT, the team was more than surprised and disturbed when data emerged from high quality-controlled experiments that supported the well-entrenched threshold dose-response model instead of LNT. This sent the entire team into what could only be called “damage control”. Deliberately violating scientific standards of unbiased objectivity, they sought unprincipled and frankly deceitful ways to preserve LNT and to discredit the findings. With a now well-known narrative, Stern and Muller connived to undermine the threshold model in deceptive ways, including Muller's comments at his Nobel Prize Lecture and repeatedly in the scientific literature, Stern's obfuscations, and staff members joining in with Stern either because of simply being afraid or refusing to speak up. They orchestrated a cover up that captured the field, eventually contaminating the US NAS BEAR Genetics Panel (1956), which committed scientific misconduct in an attempt to ensure that LNT would replace the threshold model for mutation and cancer risk assessment (Calabrese, 2011b, 2015). From the late 1950s until its recent demise, LNT would rule the risk assessment world. Even though it could not explain evolution, there was little else that was more significant in the environmental domain than LNT, with the possible exception of the new kid on the block by the name of climate change.

Despite their brilliance, however, Muller, Stern and colleagues would make two critical mistakes in judgment that would reveal the folly of their LNT recommendation. The first involved the use of the mature spermatozoa in mutation research. They incorrectly assumed that findings with the mature spermatozoa would apply to all cells—reproductive and somatic. However, before the decade of the 1950s ended, all signs suggested that this highly specialized reproductive cell was unlike all other cell types in that it lacked the capacity to repair genetic damage. By 1972, even members of Muller's own group of loyalists, such as Jim Crow the chair the US NAS BEIR Genetics Subcommittee, concluded that the US NAS Genetics Panel of 1956 got the key question of dose rate wrong and used the wrong cell type to

estimate cancer risks. The second major problem was revealed a quarter century later when a senior geneticist at Oak Ridge National Labs found an error in the historical mutation rate used by the US NAS BEIR Genetics Subcommittee for the derivation and support of LNT. Recent publications in *Environmental Research* (Calabrese, 2017a; Calabrese, 2017b) showed that if this error had been detected in 1972 by the NAS Genetics Subcommittee then LNT would not have been adopted/affirmed and the threshold model would have been far more likely to be recommended for assessing radiation risks.

Although the rapid rise and success of LNT was due to plotted actions in the 1950s of formidable supporters (i.e., from the radiation genetics community and from the US National Academy of Sciences and its silent partner the Rockefeller Foundation), LNT was not without its formidable opponents as well. During the 1930s and 1940s, most opposition to LNT came from a medical community that had long maintained a loyal relationship with the threshold dose-response model. The medical community was afraid that LNT might limit the use of X-rays and radium in the treatments of cancer and other diseases because of possible risks to workers and patients. The medical community was smart and powerful and it controlled the agenda and the playing field. Nevertheless, it was still out maneuvered by key leaders of the Rockefeller Foundation who had a “Manchurian Candidate” by the name of Dr. Detlev Bronk, a simultaneous president of both the Rockefeller University and the US National Academy of Sciences. In an unprecedented move, the Foundation urged Bronk to organize the BEAR Committee and gave him the money and power to bestow opportunity and influence upon the dogma-driven community of radiation geneticists. This move diminished the medical community's hold over LNT and, at the same time, empowered LNT supporters, setting the stage for a major scientific revolution. With the medical community now neutralized and with Bronk in the driver's seat at the National Academy of Sciences, LNT simply had an easy ride to the top.

While the fledgling nuclear industry tried to fight back, it was simply outclassed by LNT, which could now easily frighten the public and politicians with warnings of cancer and images of deformed babies. This would be the principal *modus operandi* of LNT. Over the next 50 years LNT took on the chemical industry and set its sights on their universe of potentially harmful agents. The battles were long, hard and nasty, but in the end LNT whipped big industry. Even a series of Republican presidents could overcome neither LNT nor the stealthy long-term bureaucrats who frustrated their every move.

So, if the medical, nuclear and chemical communities could not disable LNT then what was the insidious disease that led to its demise? In such cases one nearly always looks for something else to blame. However, the truth of the matter is usually much closer to home. All LNT had to do was look into a mirror and see its weaknesses, which were always camouflaged by its handlers at the NAS, the Rockefeller Foundation, the EPA and other organizations, who benefited from LNT's outrageous scare tactics. LNT really knew that the discovery of dose rate effects and DNA repair was going to be a serious problem. LNT and its supporters did their best to deflect the impact of this discovery in multiple ways but it could not be denied. There were also many other adaptive responses that helped to ensure survival in a threatening world. These adaptive mechanisms could be turned on by very tiny doses of a plethora of agents and stresses, protecting all things biological. These observations led to the view that LNT could not make accurate predictions in the low-dose zone and, in fact, was only a player at high doses where relevance to human environmental exposures was almost non-existent. Over the past several decades thousands of studies have revealed that LNT could not be counted on to do the job as its predictions were routinely off by orders of magnitude. In fact, LNT had become an embarrassment to most toxicologists and radiation health scientists. The final straw for LNT occurred when it was revealed that the NAS BEIR I Genetics Subcommittee confirmed its existence because of an error which the recent papers in *Environmental*

Research (Calabrese, 2017a; Calabrese, 2017b) finally corrected. When the error was fixed, LNT once again looked into the mirror and saw nothing. It knew that its time was up.

2. Conclusion

As the once-dominant dose-response model, LNT had many lessons to teach. Professors George and Draper wrote some 30 years ago, “all models are wrong, but some are useful” (George and Draper, 1987). Time has shown that LNT was indeed dreadfully wrong and not even particularly useful. For example, it significantly increases the cost of environmental clean ups without protective advantage and has denied people opportunities to receive novel and highly effective, low-dose radiation medical treatments. LNT is much like Swiss cheese; it has far too many holes to be useful and should certainly not guide policy. Unfortunately, LNT became a dogma, a belief that could not be tested, and had highly prestigious and deceptive proponents to ensure its survival. It was also used to frighten citizens and to intimidate politicians. However, LNT's nearly century-long life of ups and downs could end on a positive note if it were to symbolize how science becomes eroded when an ideologically-driven hypothesis is blindly followed, never proven and incuriously defended as central dogma—never in doubt but often wrong. Skepticism, objectivity and hypothesis testing are at the heart of science, not the ideological defense of dogma. If LNT's life and death can teach society this lesson, then its near century-long life may at least partially compensate for the innumerable disservices it has already dealt society.

Acknowledgement

This research has been supported by awards from the US Air Force and ExxonMobil Foundation. The U.S. Government is authorized to reproduce and distribute for governmental purposes notwithstanding any copyright notation thereon. The views and conclusions contained herein are those of the author and should not be interpreted as necessarily representing policies or endorsement, either expressed or implied. Sponsors had no involvement in study design, collection, analysis, interpretation, writing and decision to and where to submit for publication consideration.

References

- Calabrese, E.J., 2009. The road to linearity: why linearity at low doses became the basis for carcinogen risk assessment. *Arch. Toxicol.* 83, 203–225.
- Calabrese, E.J., 2011a. Toxicology rewrites its history and rethinks its future: giving equal focus to both harmful and beneficial effects. *Environ. Toxicol. Chem.* 30 (12), 2658–2673.
- Calabrese, E.J., 2011b. Key studies used to support cancer risk assessment questioned. *Environ. Mol. Mutagen.* 52, 595–606.
- Calabrese, E.J., 2015. On the origins of the linear no-threshold (LNT) dogma by means of untruths, artful dodges and blind faith. *Environ. Res.* 142, 432–442.
- Calabrese, E.J., 2017a. The threshold vs LNT showdown: dose rate findings exposed flaws in the LNT model Part 1. The Russell-Muller debate. *Environ. Res.* 154, 435–451. <http://dx.doi.org/10.1016/j.envres.2016.12.006>.
- Calabrese, E.J., 2017 b. The threshold vs LNT showdown: dose rate findings exposed flaws in the LNT model Part 2. How a mistake led BEIR I to adopt LNT. *Environ. Res.* 154, 452–458. <http://dx.doi.org/10.1016/j.envres.2016.11.024>.
- George, E.P., Draper, N.R., 1987. *Empirical Model-building and Response Surfaces*. Wiley, New York, NY, 424.
- Muller, H.J., 1927. Artificial transmutation of the gene. *Science* 66 (1699), 84–87.
- Muller, H.J., 1930. Radiation and genetics. *Am. Nat.* 64 (692), 220–251.
- Muller, H.J., 1951. Radiation damage to the genetic material. In: Baitsell, G.A. (Ed.), *Science in Progress* 7. Yale University Press, New Haven, CT, 93–177.
- Muller, H.J., Mott-Smith, L.M., 1930. Evidence that natural radioactivity is inadequate to explain the frequency of “natural” mutations. *Proc. Nat. Acad. Sci.* 16, 277–285.
- Olson, A.R., Lewis, G.N., 1928. Natural reactivity and the origin of species. *Nature* 421 (3052), 673–674.
- Timofeeff-Ressovsky N., Zimmer K., Delbruck M., 1935. Über die Natur der Genmutation und der Genstruktur. *Nachrichten von der Gesellschaft der Wissenschaften zu Göttingen: Mathematische-Physikalische Klass. Fachgruppe VI, Biologie* 1(13):189–245. [English translation: on the nature of gene mutation and gene structure. Reprinted in Sloan PR, Fogel B (eds). 2011. *Creating a physical biology. The three-man paper and early molecular biology*. The University of Chicago Press, Chicago.

To: Schnare, David[schnare.david@epa.gov]
From: David Schnare
Sent: Sat 3/11/2017 5:37:29 PM
Subject: Fwd: A problem: nearly one third of CO2 emissions occurred since 1998, and it hasn't warmed
Young 2017 unreliable RTP in press.pdf

----- Forwarded message -----

From: **Stan Young** <stan.young@omicsoft.com>

Date: Sat, Mar 11, 2017 at 9:43 AM

Subject: Re: A problem: nearly one third of CO2 emissions occurred since 1998, and it hasn't warmed

To: James Visentine <james_visentine@outlook.com>, "Gould, Laurence" <LGOULD@hartford.edu>, Alex Pope <alexpope13@gmail.com>, John Dunn <jddmdjd@web-access.net>, Ken Young <kenayoung@comcast.net>, Steve Milloy <milloy@me.com>, Jack Knight <jack77062@sbcglobal.net>, Don Bogard <dondbogard@gmail.com>, Thomas Wismuller <tom@colderside.com>, "John W. Nielsen-Gammon" <n-g@tamu.edu>, Forrest Williams <fnw@sbcglobal.net>, Frank Hughes <frank.hughes@tietronix.com>, Leighton Steward <steward108@gmail.com>, James Broadfoot <jbfoot2@yahoo.com>, Aldara Peacock <aldara@seadiver.com>, Melaine Sedej <msedej@comcast.net>, George Weisskopf <g.weisskopf@earthlink.net>,Carolynn Conley <carolynn.conley-1@nasa.gov>, Pamela Loughmiller <pamela.loughmiller@gmail.com>, Richard McFarland <macsmacs@earthlink.net>, Mike Hernandez <mahernandezjr@att.net>, Marty Cornell <marty-carole@comcast.net>, John Kehr <john.kehr@theinconvenientskeptic.com>, Bob Bauman <bob@trustedsys.com>, Joyce Grush <paperlion@me.com>, "Krishen Kumar (JSC-AO522)" <krishen59@gmail.com>, Amanda Maxham <amaxham@aynrand.org>, Tom Fowler <tdfowler5@comcast.net>, Bernie Rosenbaum <bjrbuddies@gmail.com>, Norm Chaffee <chaffee.norman@att.net>, Barry Wolfer <barwolfer@aol.com>, Gene Grush <ggrush@me.com>, Richard Sauer <rlsauer17@msn.com>, Howard Lowe <howdyrl90@gmail.com>, Jim Peacock <jim@seadiver.com>, Lubert Leger <lleger123@sbcglobal.net>, charles battig <chasintx@att.net>, david schnare <dwschnare@gmail.com>, james taylor <jtaylor44@tampabay.rr.com>, patrick michaels <pmichaels@cato.org>, willie soon <vanlien@earthlink.net>

All:

Somehow I'm on this thread. How often do you see something in the newspaper, A causes B, e.g. coffee causes pancreatic cancer, or coffee reduces Alzheimer's. Etc. IF the report is of an observational study, the author just collected data and did some sort of analysis, then the odds are high that the claim is wrong in the sense that it will not replicate. Here is a short, relatively simple paper that covers the question does air pollution cause strokes. Answer, most likely not.

Why is this important? EPA has been flimflamming build its organization and causing a

lot of economic damage. \$1000/person/year. That is a lot of beer.

Stan

From: James Visentine <james_visentine@outlook.com>

Sent: Friday, March 10, 2017 11:13:03 PM

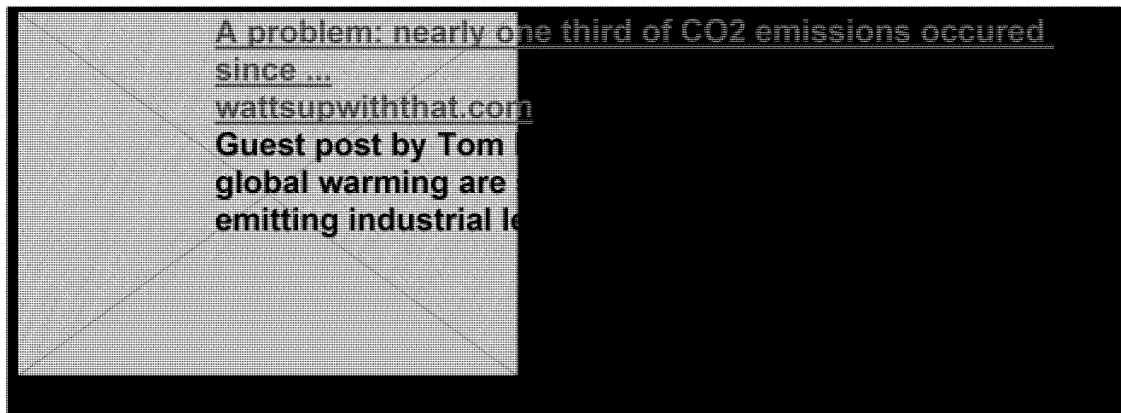
To: Gould, Laurence; Alex Pope; 'John Dunn'; 'Ken Young'; 'Steve Milloy'; 'Jack Knight'; Stan Young; 'Don Bogard'; 'Thomas Wismuller'; 'John W. Nielsen-Gammon'; 'Forrest Williams'; 'Frank Hughes'; 'Leighton Steward'; 'James Broadfoot'; 'Aldara Peacock'; 'Melaine Sedej'; 'George Weisskopf'; 'Carolynn Conley'; 'Pamela Loughmiller'; 'Richard McFarland'; 'Mike Hernandez'; 'Marty Cornell'; 'John Kehr'; 'Bob Bauman'; 'Joyce Grush'; 'Krishen Kumar (JSC-AO522)'; 'Amanda Maxham'; 'Tom Fowler'; 'Bernie Rosenbaum'; 'Norm Chaffee'; 'Barry Wolfer'; 'Gene Grush'; 'Richard Sauer'; 'Howard Lowe'; 'Jim Peacock'; 'Lubert Leger'; 'charles battig'; 'david schnare'; 'james taylor'; 'patrick michaels'; 'willie soon'

Subject: A problem: nearly one third of CO2 emissions occurred since 1998, and it hasn't warmed

Larry,

Here is a wonderful article to share with people who believe our CO2 emissions are a global problem ...

<https://wattsupwiththat.com/2012/12/06/a-problem-nearly-one-third-of-co2-emissions-occured-since-1998-and-it-hasnt-warmed/>



Do not regret growing older.

It is a privilege denied to many.

When we choose not to focus on what is missing from our lives but are grateful for the abundance that is present we experience heaven on earth.

Jim

From: Gould, Laurence <LGOULD@hartford.edu>

Sent: Friday, March 10, 2017 10:16 PM

To: Alex Pope; 'James Visentine'; 'John Dunn'; 'Ken Young'; 'Steve Milloy'; 'Jack Knight'; 'Stan Young'; 'Don Bogard'; 'Thomas Wismuller'; 'John W. Nielsen-Gammon'; 'Forrest Williams'; 'Frank Hughes'; 'Leighton Steward'; 'James Broadfoot'; 'Aldara Peacock'; 'Melaine Sedej'; 'George Weisskopf'; 'Carolynn Conley'; 'Pamela Loughmiller'; 'Richard McFarland'; 'Mike Hernandez'; 'Marty Cornell'; 'John Kehr'; 'Bob Bauman'; 'Joyce Grush'; 'Krishen Kumar (JSC-AO522)'; 'Amanda Maxham'; 'Tom Fowler'; 'Bernie Rosenbaum'; 'Norm Chaffee'; 'Barry Wolfer'; 'Gene Grush'; 'Richard Sauer'; 'Howard Lowe'; 'Jim Peacock'; 'Lubert Leger'; 'charles battig'; 'david schnare'; 'james taylor'; 'patrick michaels'; 'willie soon'

Subject: Re: "If you don't take it seriously, why do you comment so often?"

Thanks Alex.

What is the link to her Facebook page?

Is the discussion there "edited"?

Is there any video of the lecture AND the Q&A? If so, could you supply a link?

——— Larry

From: Alex Pope <alexpope13@gmail.com>

Date: Friday, March 10, 2017 at 4:28 PM

To: 'James Visentine' <james_visentine@outlook.com>, 'John Dunn' <jddmdjd@web-access.net>, 'Ken Young' <kenayoung@comcast.net>, 'Steve Milloy' <milloy@me.com>, 'Jack Knight' <jack77062@sbcglobal.net>, 'Stan Young' <stan.young@omicsoft.com>, 'Don Bogard' <dondbogard@gmail.com>, 'Thomas Wismuller' <tom@colderside.com>, "'John W. Nielsen-Gammon'" <n-g@tamu.edu>, 'Forrest Williams' <fnw@sbcglobal.net>, 'Frank Hughes' <frank.hughes@tietronix.com>, 'Leighton Steward' <steward108@gmail.com>, 'James Broadfoot' <jbfoot2@yahoo.com>, 'Aldara Peacock' <aldara@seadiver.com>, 'Melaine Sedej' <msedej@comcast.net>, 'George Weisskopf' <g.weisskopf@earthlink.net>, 'Carolynn Conley' <carolynn.conley-1@nasa.gov>, 'Pamela Loughmiller' <pamela.loughmiller@gmail.com>, 'Richard McFarland' <macsmacs@earthlink.net>, 'Mike Hernandez' <mahernandezjr@att.net>, 'Marty Cornell' <marty-carole@comcast.net>, 'John Kehr' <john.kehr@theinconvenientskeptic.com>, Laurence Gould

<lgould@hartford.edu>, 'Bob Bauman' <bob@trustedsys.com>, 'Joyce Grush' <paperlion@me.com>, 'Krishen Kumar (JSC-AO522)' <krishen59@gmail.com>, Amanda Maxham <amaxham@aynrand.org>, 'Tom Fowler' <tdfowler5@comcast.net>, 'Bernie Rosenbaum' <bjr buddies@gmail.com>, 'Norm Chaffee' <chaffee.norman@att.net>, 'Barry Wolfer' <barwolfer@aol.com>, 'Gene Grush' <ggrush@me.com>, 'Richard Sauer' <rlsauer17@msn.com>, 'Howard Lowe' <howdyrl90@gmail.com>, 'Jim Peacock' <jim@seadiver.com>, 'Lubert Leger' <lleger123@sbcglobal.net>, 'charles battig' <chasintx@att.net>, 'david schnare' <dwschnare@gmail.com>, James Taylor <jtaylor44@tampabay.rr.com>, 'patrick michaels' <pmichaels@cato.org>, Willie Soon <vanlien@earthlink.net>

Subject: RE: "If you don't take it seriously, why do you comment so often? "

Jim,

Some of us went to listen to Katherine Hayhoe speak on Wednesday night.

You should read some of the discussion on her facebook page.

From: James Visentine [mailto:james_visentine@outlook.com]

Sent: Thursday, October 20, 2016 9:18 AM

To: Alex Pope; 'John Dunn'; 'Ken Young'; 'Steve Milloy'; 'Jack Knight'; 'Stan Young'; 'Don Bogard'; 'Thomas Wysmuller'; 'John W. Nielsen-Gammon'; 'Forrest Williams'; 'Frank Hughes'; 'Leighton Steward'; 'James Broadfoot'; 'Aldara Peacock'; 'Melaine Sedej'; 'George Weisskopf'; 'Carolynn Conley'; 'Pamela Loughmiller'; 'Richard McFarland'; 'Mike Hernandez'; 'Marty Cornell'; 'John Kehr'; 'Larry I Gould'; 'Bob Bauman'; 'Joyce Grush'; 'Krishen Kumar (JSC-AO522)'; 'Amanda Maxham'; 'Tom Fowler'; 'Bernie Rosenbaum'; 'Norm Chaffee'; 'Barry Wolfer'; 'Gene Grush'; 'Richard Sauer'; 'Howard Lowe'; 'Jim Peacock'; 'Lubert Leger'; 'charles battig'; 'david schnare'; 'james taylor'; 'patrick michaels'; 'willie soon'

Subject: "If you don't take it seriously, why do you comment so often? "

Alex: "If you don't take it seriously, why do you comment so often? "

Alex, I really enjoy discussing different aspects of climate change with Don, John, Jack, Ken, Marty, Tom, Larry and you. About 85% of my emails are actually responses (like this one) to discussions others have sent me.

I love learning, and this is why I am also a member of two other discussion groups on climate change. It is true. Neither you nor I can make a difference, but if we bond together with many like-minded people, perhaps can!

Sincerely yours,

Do not regret growing older.

It is a privilege denied to many.

When we choose not to focus on what is missing from our lives but are grateful
for the abundance that is present we experience heaven on earth.

Jim

From: Alex Pope <alexpope13@gmail.com>

Sent: Thursday, October 20, 2016 4:08 AM

To: 'James Visentine'; 'John Dunn'; 'Ken Young'; 'Steve Milloy'; 'Jack Knight'; 'Stan Young'; 'Don Bogard'; 'Thomas Wysmuller'; 'John W. Nielsen-Gammon'; 'Forrest Williams'; 'Frank Hughes'; 'Leighton Steward'; 'James Broadfoot'; 'Aldara Peacock'; 'Melaine Sedej'; 'George Weisskopf'; 'Carolynn Conley'; 'Pamela Loughmiller'; 'Richard McFarland'; 'Mike Hernandez'; 'Marty Cornell'; 'John Kehr'; 'Larry I Gould'; 'Bob Bauman'; 'Joyce Grush'; 'Krishen Kumar (JSC-AO522)'; 'Amanda Maxham'; 'Tom Fowler'; 'Bernie Rosenbaum'; 'Norm Chaffee'; 'Barry Wolfer'; 'Gene Grush'; 'Richard Sauer'; 'Howard Lowe'; 'Jim Peacock'; 'Lubert Leger'; 'charles battig'; 'david schnare'; 'james taylor'; 'patrick michaels'; 'willie soon'

Subject: RE: Earth temperature is always in balance

Jim,

You wrote:

By the way why on earth do you take this stuff so seriously when really there is nothing
you nor I can do about it?

Jim, John Dunn and I and many others take this stuff so seriously because we **are** trying to do something about it.

If you don't take it seriously, why do you comment so often? I prefer to read serious, well thought out comments.

I spend time and money traveling to conferences because I believe I can and I will make a difference.

John, thanks for trying to make a difference!

Alex Pope

From: James Visentine [mailto:james_visentine@outlook.com]

Sent: Wednesday, October 19, 2016 7:03 PM

To: John Dunn; Alex Pope; 'Ken Young'; 'Steve Milloy'; 'Jack Knight'; 'Stan Young'; 'Don Bogard'; 'Thomas Wismuller'; 'John W. Nielsen-Gammon'; 'Forrest Williams'; 'Frank Hughes'; 'Leighton Steward'; 'James Broadfoot'; 'Aldara Peacock'; 'Melaine Sedej'; 'George Weisskopf'; 'Carolynn Conley'; 'Pamela Loughmiller'; 'Richard McFarland'; 'Mike Hernandez'; 'Marty Cornell'; 'John Kehr'; 'Larry I Gould'; 'Bob Bauman'; 'Joyce Grush'; 'Krishen Kumar (JSC-AO522)'; 'Amanda Maxham'; 'Tom Fowler'; 'Bernie Rosenbaum'; 'Norm Chaffee'; 'Barry Wolfer'; 'Gene Grush'; 'Richard Sauer'; 'Howard Lowe'; 'Jim Peacock'; 'Lubert Leger'; 'charles battig'; 'david schnare'; 'james taylor'; 'patrick michael'; 'willie soon'

Subject: Re: Earth temperature is always in balance

Amazing!

I was always taught you can disagree with people without being disagreeable. You must be a very insecure, lonely person to become so angry with people who like me politely disagree with you! With your blood pressure so high and your rage so intense you are sure to die an unpleasant early death!

By the way why on earth do you take this stuff so seriously when really there is nothing you nor I can do about it?

Do not regret growing older.

It is a privilege denied to many.

When we choose not to focus on what is missing from our lives but are grateful for the abundance that is present we experience heaven on earth.

Jim

From: John Dunn <jddmdjd@web-access.net>

Sent: Wednesday, October 19, 2016 11:42 PM

To: James Visentine; Alex Pope; 'Ken Young'; 'Steve Milloy'; 'Jack Knight'; 'Stan Young'; 'Don Bogard'; 'Thomas Wysmuller'; 'John W. Nielsen-Gammon'; 'Forrest Williams'; 'Frank Hughes'; 'Leighton Steward'; 'James Broadfoot'; 'Aldara Peacock'; 'Melaine Sedej'; 'George Weisskopf'; 'Carolynn Conley'; 'Pamela Loughmiller'; 'Richard McFarland'; 'Mike Hernandez'; 'Marty Cornell'; 'John Kehr'; 'Larry I Gould'; 'Bob Bauman'; 'Joyce Grush'; 'Krishen Kumar (JSC-AO522)'; 'Amanda Maxham'; 'Tom Fowler'; 'Bernie Rosenbaum'; 'Norm Chaffee'; 'Barry Wolfer'; 'Gene Grush'; 'Richard Sauer'; 'Howard Lowe'; 'Jim Peacock'; 'Lubert Leger'; 'charles battig'; 'david schnare'; 'james taylor'; 'patrick michaels'; 'willie soon'

Subject: Re: Earth temperature is always in balance

not true, visentine—you are clearly and convincingly one of the neurotics and jerks of

this group. I have never dealt with such an ass. Understand this, Visentine, I am not in the business of

worrying about jerks like you, I have plenty of things to focus on.

The right stuff group doesn't have the courage or whatever to kick your ass out or discipline you for obnoxious attitudes and posts?

I keep hearing from people in the group who have made a conscious effort to ignore your provocative posts and silly pronouncements. Gee, why would that be?

Understand this, Visentine—jerkwater, whatever and whoever you are, will not make difference at the end—since you have staked out the plot of ground that belongs to what—the knuckleheads? Sorry, but that was your choice.

Because I am not an invited member of this group of hard scientists you would disqualify me—how bout real scientific expertise where I claim it?

The hard scientists need to get a grip, and dig in their heels and insist on hard scientist adherence to good evidence. When the inquiry goes beyond engineering and physics, the hard scientists should get a little queeeeeeezy and maybe just be alert to what is said. That pertains to this dispute about epidemiology, which is almost contrary to hard science—it is soft, soft, soft.

You, Visentine, are like a journalist, pushing agendas and silliness. In the big picture you are hard to discern, kinda blurry, and fading. What the hell is your deal? Being obnoxious?

John Dale Dunn MD JD
Civilian Faculty Emergency Medicine
Carl R. Darnall Army Med Center
401 Rocky Hill Road
Brownwood, TX 76801

325 784 6697
325 642 5073 (cell)
325 784 6697
325 642 5073 (cell)

From: James Visentine

Sent: Wednesday, October 19, 2016 5:49 PM

To: John Dunn ; Alex Pope ; Ken Young ; Steve Milloy ; Jack Knight ; Stan Young ; Don Bogard ; Thomas Wismuller ; John W. Nielsen-Gammon ; Forrest Williams ; Frank Hughes ; Leighton Steward ; James Broadfoot ; Aldara Peacock ; Melaine Sedej ; George Weisskopf ; Carolynn Conley ; Pamela Loughmiller ; Richard McFarland ; Mike Hernandez ; Marty Cornell ; John Kehr ; Larry I Gould ; Bob Bauman ; Joyce Grush ; Krishen Kumar (JSC-AO522) ; Amanda Maxham ; Tom Fowler ; Bernie Rosenbaum ; Norm Chaffee ; Barry Wolfer ; Gene Grush ; Richard Sauer ; Howard Lowe ; Jim Peacock ; Lubert Leger ; charles battig ; david schnare ; james taylor ; patrick michaels ; willie soon

Subject: Re: Earth temperature is always in balance

"Are there really neurotics in this excellent scientist group."

The only neurotic person we can easily identify is a uninvited guest in our discussion group and that guest is you.

Do not regret growing older.

It is a privilege denied to many.

When we choose not to focus on what is missing from our lives but are grateful for the abundance that is present we experience heaven on earth.

Jim

From: John Dunn <jddmdjd@web-access.net>

Sent: Wednesday, October 19, 2016 10:32 PM

To: Alex Pope; 'James Visentine'; 'Ken Young'; 'Steve Milloy'; 'Jack Knight'; 'Stan Young'; 'Don Bogard'; 'Thomas Wismuller'; 'John W. Nielsen-Gammon'; 'Forrest Williams'; 'Frank Hughes'; 'Leighton Steward'; 'James Broadfoot'; 'Aldara Peacock'; 'Melaine Sedej'; 'George Weisskopf'; 'Carolynn Conley'; 'Pamela Loughmiller'; 'Richard McFarland'; 'Mike Hernandez'; 'Marty Cornell'; 'John Kehr'; 'Larry I Gould'; 'Bob Bauman'; 'Joyce Grush'; 'Krishen Kumar (JSC-AO522)'; 'Amanda Maxham'; 'Tom Fowler'; 'Bernie Rosenbaum'; 'Norm Chaffee'; 'Barry Wolfer'; 'Gene Grush'; 'Richard Sauer'; 'Howard Lowe'; 'Jim Peacock'; 'Lubert Leger'; 'charles battig'; 'david schnare'; 'james taylor'; 'patrick michael'; 'willie soon'

Subject: Re: Earth temperature is always in balance

I have a problem with the supercritical super hot gas fired coal plants—they accomplish cleaner burning, but for what reason, if you know that the claims of emission deaths are bullshit.

So these really expensive hot coal burners do what—they cater to the neurotics and enviro neuroses or guilt? Come on people stop it. It's like dummy GHW Bush declaring himself the enviro president back in the day—what the hell did he know except the anxiety about saving mother gaia?

Are there really neurotics in this excellent scientist group.

I don't think so.

John Dale Dunn MD JD
Civilian Faculty Emergency Medicine
Carl R. Darnall Army Med Center
401 Rocky Hill Road
Brownwood, TX 76801
[325 784 6697](tel:3257846697)
[325 642 5073](tel:3256425073) (cell)

325 784 6697
325 642 5073 (cell)

From: Alex Pope

Sent: Wednesday, October 19, 2016 4:17 PM

To: 'James Visentine' ; 'Ken Young' ; 'Steve Milloy' ; 'Jack Knight' ; 'Stan Young' ; 'John Dunn' ; 'Don Bogard' ; 'Thomas Wismuller' ; 'John W. Nielsen-Gammon' ; 'Forrest Williams' ; 'Frank Hughes' ; 'Leighton Steward' ; 'James Broadfoot' ; 'Aldara Peacock' ; 'Melaine Sedej' ; 'George Weisskopf' ; 'Carolynn Conley' ; 'Pamela Loughmiller' ; 'Richard McFarland' ; 'Mike Hernandez' ; 'Marty Cornell' ; 'John Kehr' ; 'Larry I Gould' ; 'Bob Bauman' ; 'Joyce Grush' ; 'Krishen Kumar (JSC-AO522)' ; 'Amanda Maxham' ; 'Tom Fowler' ; 'Bernie Rosenbaum' ; 'Norm Chaffee' ; 'Barry Wolfer' ; 'Gene Grush' ; 'Richard Sauer' ; 'Howard Lowe' ; 'Jim Peacock' ; 'Lubert Leger' ; 'charles battig' ; 'david schnare' ; 'james taylor' ; 'patrick michaels' ; 'willie soon'

Subject: Earth temperature is always in balance

Earth temperature is always in balance or close to in balance.

Rapid response to cloudy and clear, day and night, summer and winter do prove this to be true.

I have attached two documents. They are the same except one is PowerPoint and one is PDF.

This is one more attempt to explain the extremely simple concept of earth temperature regulation using ice on land.

Ice volume and weight regulates ice advance and retreat. Ice extent regulates temperature.

The thermostats in the NH and SH are set to the temperature that Polar Oceans Freeze and Thaw.

It snows more when it is too warm and it snows less when it is cold enough.

This cycle has been evolving as continents drifted and shifted more tropical currents into polar regions to support more and more ice on land in cold places where it could survive the warm times. The most recent ten thousand years has been paradise because the ice is now cycling in the new smaller cycles. It will stay like this until continent drift or something makes changes to ocean circulation. The SH cycle is very likely to stay the same. The NH cycle could be changed with ocean current changes to flow into the Arctic, it flows in through a small channel. The arctic must thaw in warm time periods to rebuild ice in the NH. It freezes in cold time periods to allow ice on land in the NH to deplete.

Almost everyone, on the different sides, understand the ice backwards. Ocean effect snowfall only increases when polar oceans are thawed. The warm times are necessary to rebuild the ice on land. The air cooling system comes on when needed and runs as long as necessary. This robust, extremely stable cycle is not in any immediate danger from anything that tries to push temperature out of bounds.

Many people have told me, privately, that they think my theory is correct, but very few speak out to many others.

Please, I hope many respond to this with their thoughts for and against.

Alex Pope

I am using the Free version of [SPAMfighter](#).
SPAMfighter has removed 224 of my spam emails to date.

Do you have a [slow PC](#)? Try a free scan!

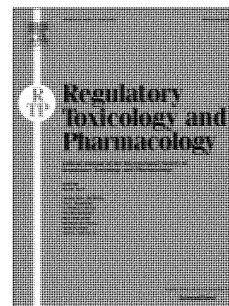
--

David W. Schnare, Esq. Ph.D.

Accepted Manuscript

Air quality environmental epidemiology studies are unreliable

S. Stanley Young



PII: S0273-2300(17)30067-3

DOI: 10.1016/j.yrtph.2017.03.009

Reference: YRTPH 3793

To appear in: *Regulatory Toxicology and Pharmacology*

Received Date: 17 December 2016

Revised Date: 6 March 2017

Accepted Date: 7 March 2017

Please cite this article as: Young, S.S., Air quality environmental epidemiology studies are unreliable, *Regulatory Toxicology and Pharmacology*(2017), doi: 10.1016/j.yrtph.2017.03.009.

This is a PDF file of an unedited manuscript that has been accepted for publication. As a service to our customers we are providing this early version of the manuscript. The manuscript will undergo copyediting, typesetting, and review of the resulting proof before it is published in its final form. Please note that during the production process errors may be discovered which could affect the content, and all legal disclaimers that apply to the journal pertain.

1 Air quality environmental epidemiology studies are unreliable

2 S. Stanley Young

3 CEO CGStat

4 Words Total: 2449

5 Figures: 0

6 Tables: 2

7

8 References: 31

9

10 Contact Author:

11 S. Stanley Young

12 3401 Caldwell Drive

13 Raleigh, NC 27607-3326

14 genetree@bellsouth.net

15 919 782 2759

16

17 This work was partially supported by the American Petroleum Institute

18

19 I have no conflict of interests.

Abstract (200 words)

Ever since the London Great Smog of 1952 is estimated to have killed over 4,000 people, scientists have studied the relationship between air quality and acute mortality. There are many hundreds of papers examining the question. There is a serious statistical problem with most of these papers. If there are many questions under consideration, and there is no adjustment for multiple testing or multiple modeling, then unadjusted p-values are totally unreliable making claims unreliable. Our idea is to determine the statistical reliability of eight papers published in Environmental Health Perspectives that were used in meta-analysis papers appearing in Lancet and JAMA. We counted the number of outcomes, air quality predictors, time lags and covariates examined in each paper. We estimate the multiplicity of questions that could be asked and the number of models that could be constructed. The results were that the median numbers of comparisons possible for multiplicity, models and search space were 135, 128, and 9,568 respectively. Given the large search spaces, finding a small number of nominally significant results is not unusual at all. The claims in these eight papers are not statistically supported so these papers are unreliable as are the meta-analysis papers that use them.

KEY WORDS: environmental epidemiology, air quality, mortality, observational studies, multiple testing, multiple modeling, analysis search space.

1.0 Background and Introduction (2217 words)

Epidemiology exhibits a notoriously poor record with a serious lack of reproducibility of published findings going back at least as far as **Feinstein (1988)** with continuing complaints: **Taubes and Mann (1995), Ioannidis (2005), Kaplan et al. (2010), and Young and Karr (2011)**, to name only a few. Even the popular press is taking notice of the problems; **Taubes (2007)** and **Hughes (2007)** are two examples. See also **Wikipedia (2016)** Replication crisis. Ominously, there may be actual misuse and / or even deliberate abuse of model fitting methods; see **Clyde (2000), Glaeser (2006), Young and Karr (2011)**. In 2002, Norman Breslow noted that students with the same training and the same data set produced statistical models with vastly different claims, **Breslow (2003)**. In 2010, two groups of researchers using the same data base of observational data found that a treatment both caused, **Cardwell et al. (2010)**, and did not cause, **Green et al. (2010)**, cancer of the esophagus. A Nature survey reported that 90% of scientists responding said there is crisis in science: a serious, 52%, or minor, 38%, crisis, **Baker (2016)**.

The state of science is bad enough that a consumer of a science paper should start with the premise that any claim made is more likely than not to be wrong (it will fail to replicate).

The current US Environmental Protection Agency, EPA, paradigm is that PM_{2.5} is *causal* of acute human deaths. The then head of the EPA, Lisa Jackson, said “Particulate matter causes premature death. It doesn’t make you sick. It’s directly causal to dying sooner than you should.” She went on to say “If we could reduce particulate matter to levels that are healthy we would have an identical impact to finding a cure for cancer.” Cancer causes ~570,000 deaths per year.

This report unapologetically takes the position that the current paradigm, air quality is a killer, is not supported by statistical analysis that take multiple testing and multiple modeling into account

and claims made in these papers may not replicate. Papers supporting the current paradigm are many. Google Scholar, “air pollution, mortality”, returns over 900,000 hits; **Schwarz et al. (2016)** is typical. These studies are almost always associational studies, and of course, association is not proof of causation. To examine our claim that the EPA paradigm is wrong, we start with two recent meta-analysis papers that look at air quality and mortality effects, **Nawrot et al. (2011)**, **Mustafic et al. (2012)**, hereafter Lancet and JAMA. Eight of the base papers used in these meta-analysis studies were published in Environmental Health Perspective, EHP; we examine those papers. Our thesis is that these papers are statistically flawed and that they may be part of a publication bias.

A major contribution of this research is to show that a seriously flawed analysis strategy is used in these eight EHP papers rendering claims made in these papers unsupported.

2. Methods

In randomized clinical trials, RCTs, there is very careful attention given to the statistical analysis. A statistical protocol is developed and agreed to by the interested parties, often a drug company and the US FDA, before the study starts. One of the major concerns is the control of statistical false positive results. Statistical, experimental and managerial strategies are employed to control the false positive rate. Often replication of a finding is required. Contrast a RCT with the typical environmental observational study, EO. Environmental epidemiology essentially has few, if any, analysis requirements. In an EO study, the researcher can modify the analysis as the data is examined. Multiple outcomes can be examined, multiple variables (air components) can

be used as predictors. The analysis can be adjusted by putting multiple covariates into and out of the model. It is thought that effects can be due to events on prior days so different lags can be examined. For example, PM2.5 yesterday or the day before can cause deaths today. Seldom, if ever, is there a written, statistical protocol prior to examination of the data. With these factors (outcomes, predictors, covariates, lags), there is no standard analysis strategy. The strategy can be try-this-and-try-that. Our method is simple counting and computing the size of the available analysis space.

3. Results

In Table 1, we give the numbers of outcomes, predictors, lags and covariates, for each of the eight papers. Functions of these counts can be used to estimate the number of questions, models and search space available analysis. The product of outcomes, predictors and lags gives the number of questions at issue. For example, three outcomes (AllCause Deaths, heart attacks, and stroke) can be paired with six predictors (CO, NO₂, SO₂, PM2.5, PM10, ozone) to give 18 possible questions. The number of models is given by $2^{\text{Covariates}}$, taking the position that each covariate can be in the model or not. The search space is the number of questions times the number of models.

The median sizes of questions, models and search space are 135, 128, and 9,568 respectively. See Table 2. None of the eight papers mention correcting for multiple testing or multiple modeling. All papers appear to test at the level of 0.05. Given the multiple testing and multiple modeling, none of these papers provide strong evidence for their claims. Any claim made could

easily be due to chance, a false positive. Note that each of these eight papers should be examined separately for strength of evidence. They must stand on their own before they can be considered for combining in a meta-analysis. As the base papers do not appear reliable, the meta-analysis papers, Lancet and JAMA, also appear unreliable.

4. Discussion

There are many ways to increase the number of analysis options beyond our simple counting. We count two genders and two possible analyses (gender is in the analysis or not), but the analysis could be male, female and combined giving three options. In examination of a dose response, mortality versus PM_{2.5} level, logistic regression could be used, one model. Doing a transformation of the dose, say log, points the way to trying multiple transformations, Ginevan and Watkins (2010). Often the dose is cut into several groups, which offers further opportunities for model searching. Age can be treated as a continuous variable or cut into groups with an analysis in each group. Mann et al. (2002) do an analysis for each of three age groups so it could enter the counting process as three rather than two, in or out of the model. Temperature is obviously cyclical. It can be treated in any of several ways. Temperature effects can be controlled by use of a spline curve with differing degrees of stiffness. Or analysis can be within seasons. If case crossover analysis is used, comparisons are often within a month. Each of the analysis options could be changed from outcome to outcome and differ for each of the air components. Multi-component models could be computed, e.g. PM_{2.5} and ozone together in a model. These various methods could be explored giving the analyst many options for analysis.

After the dramatic increase in deaths after the Great London Smog, there was considerable search for the causative agent. The current paradigm, PM_{2.5} is a killer, essentially starts with **Dockery et al. (1993)**. That paper now has over 7,000 citations. In effect, their association claim is usually taken that PM_{2.5} is causative of deaths. The dramatic claim of Dockery fell upon very fertile ground. Dockery has been much criticized; the data set has been examined, but it is not publicly available.

Arguably a contemporaneous study was better, **Styer et al. (1995)**. The sample size was much larger and the statistical analysis was sound. They tried a wide range of models and they found no consistent air quality effect on mortality. That paper is cited only just over 100 times. Both Dockery and Styer were funded by EPA.

The positive Dockery paper was taken as valid and became the operational paradigm. Once a new paradigm is accepted (in this case by the EPA), it is expected that scientists will come in to fill in the gaps, **Kuhn (1962)**, (and take advantage of funding opportunities). Subsequently many positive association studies were published. An editor commented to me, “The issue addresses what was laid to rest in the mid 1990s by a large reanalysis report sponsored by HEI. EPA and other regulatory bodies have long since concluded these associations are causal so I don’t think there is much point in going over this again and again.” in rejecting one of my papers without review.

It is rather routine for editors to reject negative studies out of hand. Informal conversations with multiple authors of published negative studies support the difficulty of getting them published. For example, there is evidence that Environmental Health Perspectives has a policy of rejecting

negative papers. If they have that policy, they are not alone. Across the board, negative studies have a more difficult time getting published. Eventually we can have serious publication bias, positive studies are accepted as they support the current paradigm and negative studies are rejected. So far as we know observational studies used in meta-analyses are not routinely examined for multiple testing and multiple modeling bias. For more discussion of publication bias see Wikipedia, Publication bias.

There is something of an art to writing of a scientific paper. Humans like a good story. The positive is accentuated and facts that do not fit are downplayed or even omitted, **Glaeser (2006)**. Consider three marker negative papers, **Styer et al. (1995)**, 115 citations, **Chay et al. (2003)**, 103 citations and **Enstrom (2005)**, 62 citations. Styer is cited only once in the eight papers and then not fairly. Chay is not cited in any of the four papers published after 2003. Enstrom is not cited in any of the three papers published after 2005. **Schwartz et al. (2017)** does not cite any of the three marker negative papers nor the important **Greven et al. (2011)** negative paper. In general, paradigm-negative papers are not cited by paradigm positive papers

The primary author of each of the eight base papers was contacted twice asking if analysis data set used in their paper was available. None of the authors provided their analysis data set. Without access to the analysis data sets it is not possible to adjust the analysis for multiple testing and multiple modeling. From what is available in the base papers, it appears that none of the claims made in the eight papers would be statistically significant after adjustment.

It is not possible to prove a negative so to make a claim, an investigator should provide strong evidence, an analysis that names all the questions at issue and fairly adjusts for multiple testing

and multiple modeling. None of the claims made in these EHP papers can be considered reliable due to inadequate analysis. The data should be made public so that the analysis can be corrected for multiple testing and multiple modeling.

A necessary requirement for numbers coming from a base paper to be combined in a meta-analysis is that the numbers be unbiased estimates of the quantity at issue, Boos and Stefansky (2013). The numbers can vary by chance from the target quantity, but they cannot be biased.

We, the science community, are letting the authors get away with doing exploratory data analysis repeatedly. They look at multiple outcomes, multiple causes, any number of covariates, and any number of time lags. They try this and try that and publish a paper if they get a p-value less than 0.05 where a plausible story can be made. If they fail to find "statistical significance," then it appears that they simply do not publish, creating publication bias. Authors, editors and consumers can become true believers in a false paradigm.

Here is a missing insight. In real science, a hypothesis is refined, and then retested with new data on a sharp question. The protocol is written before the new data is analyzed. There is statistical error control. There is replication. Logically the results of the new, more definitive study should take precedence over the exploratory studies. If it is positive, we say the hypotheses is supported. Popper, pure and simple. If the new study fails, we should say the hypothesis fails and spend science resources on some other problem.

It is very easy for humans to become true believers, especially when there is funding. Those doing air quality and health effects research should be held to good scientific standards. See Kabat (2017) pages 51-55.

5. Summary

Eight papers from Environmental Health Perspectives used in one or both meta-analysis studies were carefully examined with respect to the range of analysis options open to the researcher, the size of the analysis search space. The search space for each paper is large (in many cases vast) so that testing claims at a nominal 0.05 level is problematic. Any meta-analysis using these papers should also be considered unreliable until the reliability of the underlying papers is assured.

6. Next Steps

It is recommended that the editor of Environmental Health Perspectives mark the eight papers as “Exploratory Study, not to be used for decision making”. As the meta-analysis papers are not reliable, the editors of Lancet and JAMA should consider marking them “Withdrawn until the base papers are corrected for bias and a new meta-analysis is done.”

References: (739 words)**Eight Environmental Health Perspectives References:**

Barnett A.G, Williams G.M, Schwartz J., et al., 2006. The effects of air pollution on hospitalizations for cardiovascular disease in elderly people in Australian and New Zealand cities. *Environ Health Perspect* 114,1018–1023.

Koken P.J., Piver W.T., Ye F., Elixhauser A., Olsen L.M., Portier C.J., 2003. Temperature, air pollution, and hospitalization for cardiovascular diseases among elderly people in Denver. *Environ Health Perspect* 111,1312–1317.

Linn W.S., Szlachet Y., Gong H. Jr, Kinney P.L., Berhane K.T., 2000. Air pollution and daily hospital admissions in metropolitan Los Angeles. *Environ Health Perspect* 108,427–434.

Mann J.K., Tager I.B., Lurmann F., et al., 2003. Air pollution and hospital admissions for ischemic heart disease in persons with congestive heart failure or arrhythmia. *Environ Health Perspect* 110,1247–1252.

Rich D.Q., Kipen H.M., Zhang J., Kamat L., Wilson A.C., Kostis J.B., 2010. Triggering of transmural infarctions, but not nontransmural infarctions, by ambient fine particles. *Environ Health Perspect.* 118,1229-1234.

Ye F., Piver W.T., Ando M., Portier C.J., 2001. Effects of temperature and air pollutants on cardiovascular and respiratory diseases for males and females older than 65 years of age in Tokyo, July and August 1980–1995. *Environ Health Perspect* 109,355–359.

Zanobetti A., Schwartz J., 2005. The effect of particulate air pollution on emergency admissions for myocardial infarction: a multicity case-crossover analysis. *Environ Health Perspect* 113,978–982.

Zanobetti A., Schwartz J. 2009., The effect of fine and coarse particulate air pollution on mortality: a national analysis. *Environ Health Perspect.* 117,898-903.

General References:

Baker, M., 2016. 1,500 scientists lift the lid on reproducibility. *Nature* 533,452-454.

<http://www.nature.com/news/1-500-scientists-lift-the-lid-on-reproducibility-1.19970>

Boos D.D., Stefanski L.A.. 2013. *Essential Statistical Inference: Theory and Methods*. Springer Science+Business Media New York Page 188.

Chay K., Dobkin C., Greenstone M., 2003. The Clean Air Act of 1970 and adult mortality. *J Risk Uncertainty* 27,279-300.

- Dockery D.W., Pope C.A. III, Xu X., Spengler J.D., Ware J.H., Fay M.E., et al., 1993. An association between air pollution and mortality in six U.S. cities. *N Engl J Med* 329,1753–1759.
- Enstrom J.E. 2005. Fine particulate air pollution and total mortality among elderly Californians. 1973–2002. *Inhalation Toxicology* 17,803–816.
- A. R. Feinstein A.R. 1988. Scientific standards in epidemiologic studies of the menace of daily life, *Science* 242,1257–1263.
- Ginevan, M.E., Watkins D.K., 2010. Logarithmic dose transformation in epidemiologic dose-response analysis: Use with caution. *Regulatory Toxicology and Pharmacology*. 58,336-340.
- Glaeser E.L. 2006., *Researcher Incentives and Empirical Methods*. Discussion paper 2122. http://scholar.harvard.edu/files/glaeser/files/researcher_incentives_and_empirical_methods.pdf, [Last accessed on November 21, 2016].
- Green, J., Czanner, G. Reeves, J. Watson, Wise L., Beral V., 2010. Oral bisphosphonates and risk of cancer of oesophagus, stomach, colorectum: Case-control analysis with a UK primary care cohort. *Br. Med. J.* 341, c4444.
- Greven S., Dominici F., Zeger S., 2011. An approach to the estimation of chronic air pollution effects using spatio-temporal information. *J Amer Stat Assoc* 106,396-406.

- 278
279 Hughes S., New York Times Magazine focuses on pitfalls of epidemiological trials.
280 September 18, 2007. <http://www.medscape.com/viewarticle/789597>
281
282 Kabat G.C., 2017. *Getting Risk Right: Understanding the science of elusive health risks*.
283 Columbia University Press. NY.
284
285 Kaplan S.H., Billimek J., Sorkin D.H., Ngo-Metzger Q., Greenfield S., 2010. Who can respond
286 to treatment? Identifying patient characteristics related to heterogeneity of treatment effects.
287 Medical Care 48,S9–S16.
288
289 Kuhn T.S., 1962. The structure of scientific revolutions. University of Chicago Press
290
291 Ioannidis J.P.A., 2005. Contradicted and initially stronger effects in highly cited clinical
292 research. J Am Med Assoc 294,218–229.
293
294 Mustafic H., Jabre P., Caussin C., Murad M.H., Escolano S., Tafflet M., Perier M-C., Marijon E.,
295 Vernerey D., Empana J-P., Jouven X., 2012. Main air pollutants and myocardial infarction: A
296 systematic review and meta-analysis. J Am Med Assoc 307,713-712.
297
298 Nawrot T.S., Perez L., Künzli N., Munters E., Nemery B., 2011. Public health importance of
299 triggers of myocardial infarction: a comparative risk assessment. Lancet 377,732-740.
300

Schwartz J., Bind M-A., Koutrakis P., 2017. Estimating causal effects of local air pollution on daily deaths: Effect of low levels. *Environ Health Perspect* 125, 23-29.

Styer P., McMillan N., Gao F., Davis J., Sacks J., 1995. Effect of outdoor airborne particulate matter on daily death counts. *Environ Health Perspect* 103,490–497.

Taubes G., Mann C.C., 1995. Epidemiology faces its limits. *Science* 269,164–169.

Taubes, G., Do we really know what makes us healthy? *New York Times Magazine*, September 16, 2007. <http://www.nytimes.com/2007/09/16/magazine/16epidemiology-t.html>

Wikipedia. Publication bias. 2017. https://en.wikipedia.org/wiki/Publication_bias

Wikipedia. Replication crisis. 2017. https://en.wikipedia.org/wiki/Replication_crisis

Young S.S., Karr A., Deming, data and observational studies: A process out of control and needing fixing. *Significance* (September) 2011; 8,122–126.

Table 1. Counts of questions at issue in eight Environmental Health Effect papers used in two meta-analysis papers.

Reference	Outcomes	Predictors	Lags	Covariates	Questions	Models	Search Space
1 Koken 2003	5	6	5	5	150	32	4800
2 Linn 2000	10	4	3	7	120	128	15360
3 Mann 2002	4	4	6	9	96	512	49152
4 Ye F 2001	16	7	5	3	560	8	4480
5 Zanobetti 2005	1	1	3	7	3	128	384
6 Rich DQ 2010	5	5	7	10	175	1024	179200
7 Zanobetti 2009	5	6	5	4	150	16	2400
8 Barnett 2006	7	4	2	8	56	256	14336

Table 2. Number of questions, models, and total search space, medians and quartiles.

	Median	25%	75%
Multiple Questions	135	66	168
Multiple Models	128	20	448
Total Search Space	9,568	2,920	40,704

Research Highlights

- In environmental epidemiology, usually there are many questions at issue.
- Incorrect stat methods are used, knowing claims are unlikely to replicate.
- A requirement of meta-analysis is unbiased statistics from base studies.
- Environmental Health Perspectives papers do not correct for multiple testing.
- Any such papers are unreliable for regulatory decisions or meta-analysis.

To: Pruitt, Scott[Pruitt.Scott@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]
From: Richard Kinch
Sent: Mon 8/21/2017 8:40:32 PM
Subject: [SPAM] RE: Ex-EPA'er - A Different Perspective

As an ex-EPA employee that believes in sharing ideas for positive change, I thought of one that was intriguing...

In my early days at EPA doing Effluent Guidelines in the mid 70's, there was a significant presence of employees that had industrial experience. I believe that mix was healthy. With time, it seemed that most all the new EPA hires do not have industrial experience. To the extent there is hiring, and a desire to change the culture, one very meaningful act would be to place a priority on hiring people with some industrial experience – not simply entry level people right out of school.

I am not saying, nor do I believe, those with industrial experience are inherently better. I do, however, believe the pendulum swung too far, and that a significant mix is a healthy thing for the organization.

Richard Kinch

To: Schnare, David[schnare.david@epa.gov]
From: Brown, Byron
Sent: Thur 3/9/2017 2:35:43 PM
Subject: RE: Chlorpyrifos One-Pager

Ok, yes let me know. I would like to make sure were all on the same page and coordinating and not separately bird dogging the same thing.

From: Schnare, David
Sent: Thursday, March 9, 2017 9:34 AM
To: Brown, Byron <brown.byron@epa.gov>
Subject: Re: Chlorpyrifos One-Pager

I met with Cleland-Hamner. I'll let you know when I get into the office and you can come by to discuss. OGC did not respond.

Sent from my iPhone

On Mar 9, 2017, at 8:54 AM, Brown, Byron <brown.byron@epa.gov> wrote:

David – did OCSP and OGC ever respond? Ryan has asked me last night to follow up on a couple of issues related to this decision, and I'd like the benefit of know what if anything the program and OGC have said before I do that. Thanks.

From: Schnare, David
Sent: Tuesday, March 7, 2017 10:29 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: Fwd: Chlorpyrifos One-Pager

By noon Wednesday please provide an analysis of the attached memo from the Department of Agriculture, either admitting each statement or refuting it. I am not interested in further argument in support of the proposed finding. I want to know the facts, all the facts.

Deliberative Process Privilege/Ex. 5

dschnare

Sent from my iPhone

Begin forwarded message:

From: "Dravis, Samantha" <dravis.samantha@epa.gov>
Date: March 7, 2017 at 5:51:27 PM EST
To: "Schnare, David" <schnare.david@epa.gov>, "Brown, Byron" <brown.byron@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>
Subject: FW: Chlorpyrifos One-Pager

Making sure the three of you had this as well.

From: Schwab, Justin
Sent: Tuesday, March 7, 2017 4:04 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Fwd: Chlorpyrifos One-Pager

See attached, Deliberative Process Privilege/Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Vaden, Stephen - OGC" <Stephen.Vaden@ogc.usda.gov>
Date: March 7, 2017 at 11:02:30 AM EST
To: "schwab.justin@epa.gov" <schwab.justin@epa.gov>
Subject: Chlorpyrifos One-Pager

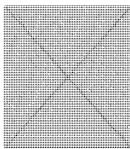
Justin,

Attached, please find a brief document outlining Deliberative Process Privilege/Ex. 5



As always, I am happy to discuss any of the points or put your staff in contact with our wonderful career people. They and I are willing to assist you in any way.

Stephen



Stephen Alexander Vaden

U.S. Department of Agriculture

Office of the General Counsel

**Senior Adviser to the Office of General
Counsel**

Whitten Building, Suite 107W

' 202-720-3351 (Voice)

To: Schnare, David[schnare.david@epa.gov]
From: Cox
Sent: Mon 3/13/2017 8:25:42 PM
Subject: Fwd: EBA Topics for Panel
10137985 1.DOCX

Sent from my iPad

Begin forwarded message:

From: "Savage, Justin A." <justin.savage@hoganlovells.com>
Date: March 13, 2017 at 3:48:53 PM EDT
To: "Savage, Justin A." <justin.savage@hoganlovells.com>, Cox <David.Schnare@epa.gov>, "Kellogg, Matt" <Matt.Kellogg@mail.house.gov>, "Alonso, Rich" <Richard.Alonso@bracewelllaw.com>
Cc: "Morrison, Jay A." <jay.morrison@nreca.coop>, "Karcz, Melissa" <melissa.karcz@hoganlovells.com>
Subject: EBA Topics for Panel

David Schnare Personal Email/Ex. 6

This has been updated in response to comments provided. See you tonight.

Best,

Justin

About Hogan Lovells

Hogan Lovells is an international legal practice that includes Hogan Lovells US LLP and Hogan Lovells International LLP. For more information, see www.hoganlovells.com.

CONFIDENTIALITY. This email and any attachments are confidential, except where the email states it can be disclosed; it may also be privileged. If received in error, please do not disclose the contents to anyone, but notify the sender by return email and delete this email (and any attachments) from your system.

3/13/18
Confidential

EBA: The Future of Environmental Law Under the Trump Administration

Wait 5 minutes for people to settle in from official start time of 5:30

Introduction

- On behalf of the Energy Bar Association and DC Bar, thank you joining our distinguished panel to discuss important topic
- Introduce self; Hogan Lovells pleased host this important event
- Goal is a robust dialogue. Before we begin, a few ground rules:
- Off-the-record event. No press. Important for open dialogue.
- Ask questions as we go – after each topic.
- For the benefit of those participating by phone, I'll repeat the question from the audience before answer.
- The event will be followed by cocktail reception

Bios of panelists

- Before we begin panel discussion, let's briefly talk about the background of our panelists
- Dr. David Schnare, served on beachhead and now landing team at EPA. Former career EPA official in enforcement office, had pleasure working with when I was at DOJ.
- Matt Kellogg, Senior Policy Advisor to House Majority Leader McCarthy. Previously General Counsel Independent Petroleum Association of America.
- Rich Alonso is a Partner in Bracewell's Environmental Strategies Group and formerly served in EPA's enforcement office where had the pleasure working with as well.

Panel Discussion Topics

[Note to Panelists: These are more topics than we could cover. Rather than strictly sticking with each of these topics, the purpose is to encourage a dialogue among you. So once the first panelist asks the question, the panelists should comment as well.]

Let's start the discussion with the panel

Panel Topic #1, Greenhouse Gas Regulations

- The Obama Administration imposed several greenhouse gas regulations under the CAA, including the Clean Power Plan (CPP); a ruling on which is pending before the DC Circuit sitting en banc.

- Will this administration wait for the DC Circuit to rule? If not, how do our panelists think the Administration will address CPP and other existing GHG regulations ?
- Alliance -- Mid-term review
- How do our panelists see the attempt to repeal CPP and other GHG regulations playing out?

Panel Topic #2, Energy Production

- Do we see a role for EPA in promoting strength in domestic energy, including promoting oil and gas production?

Panel Topic #3, Maintaining Priority Areas for the Regulated Community

- In some cases, EPA has to approve market entry before a product can be sold, e.g., car certification under Title II of the CAA, pesticide registration under FIFRA, TSCA implementation.
- How does the Administration reform EPA while making sure that the sale of cars and other products occurs in a timely fashion?
- In order to increase funding for DOD, the President has called for reduced appropriations for other federal agencies. These cuts could hurt programs industry supports, such as the Energy Efficiency & Renewable Energy program at DOE. What are your thoughts on the implications of reduced funding at DOE?

Panel Topic #4, Enforcement

- Thoughts on EPA's approach to enforcement?
- Back-to-basics?
- OECA abolished?
- Increase in citizen suits?

Panel Topic #5, Regulatory Reform

- EPA's role in implementing regulatory reform?
- 2-for-1 EO?

Panel Topic #6, Federalism.

- It's widely known that EPA wants to encourage a more active role of states in crafting policy, implementing programs, and enforcement.
- How does EPA encourage federalism?
- Where will state find resources?
- How do we balance a more active state role with the fact the regulated community would probably *not* want to see a more active role by certain states?
- Another risk is that the regulated community must deal with 50

variations on state requirements (out of the pan and into the fire).

Panel Topic #7, Role of Congress

- What do we see as the role of Congress in working with EPA in accomplishing the Administration's policy objectives?
- Reform of NAAQS process – background levels, time periods between review?
- The CRA been a topic of much discussion for several prior rules issued by the Obama Administration. Likelihood of a CRA repeal of other rules besides stream protection?

Panel Topic #8, NGOs

- It's reported that NGOs are raising record amounts of money to challenge every attempt by the Administration to amend EPA's regulations and approach.
- How does the NGO strategy impact EPA's attempt to shift course?
- Approach to deadline suits?

Panel Topic #9, Regulation-through-Litigation

- The Administrator recently spoke out against regulation-through-litigation.
- Thoughts on this and whether reform that will last after the

administration?

To: Schnare, David[schnare.david@epa.gov]
From: Sarvadi, David G.
Sent: Tue 3/7/2017 7:10:56 PM
Subject: RE: I'm not making any progress with the TSCA new chemicals branch

No, I'm at the ABA meeting in Florida all week and I'm moderating a panel Thursday until 11:30. Can do Monday AM but Monday PM I'm in a meeting with pesticides. Tuesday and Wednesday next are pretty open.

DGS

David Sarvadi
Keller and Heckman LLP

Personal Phone/Ex. 6

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Tuesday, March 07, 2017 1:43 PM
To: Sarvadi, David G.
Subject: RE: I'm not making any progress with the TSCA new chemicals branch

Can you come over here on Thursday afternoon this week?

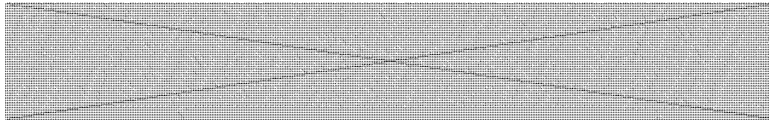
From: Sarvadi, David G. **Personal Email/Ex. 6**
Sent: Tuesday, March 7, 2017 1:31 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: I'm not making any progress with the TSCA new chemicals branch

Can we get a half hour on Tuesday or Wednesday next week to explain our issues? We're on a critical path where lack of resolution before the end of the month means forcing the business offshore.

Cordially,
DGS

David G. Sarvadi
Attorney-at-Law
tel: 202-434-4249 fax 202-434-4646 | **Personal Email/Ex. 6**
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that will cover OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at



Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

To: Flynn, Mike[Flynn.Mike@epa.gov]; Schnare, David[schnare.david@epa.gov]; Konkus, John[konkus.john@epa.gov]
From: Grantham, Nancy
Sent: Thur 3/9/2017 11:07:55 PM
Subject: FW: VW Plea Hearing on Friday

There is likely to be a DOJ press release – and we likely can have a quote.

Fyi ..thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

FYI, that the below criminal plea hearing for VW may happen tomorrow...no decision yet on a release—Wyn at DOJ said he would send me something if they want to do one, though we may wait until the sentencing. Also, it is expected that the third part of the VW civil settlement could be entered in court tomorrow (<https://www.epa.gov/enforcement/reference-news-release-volkswagen-spend-147-billion-settle-allegations-cheating>).

Justin has been briefed on this and Larry thinks Justin is going to brief Ryan Jackson tonight on this if he hasn't already.

Thanks,

John

From: Starfield, Lawrence
Sent: Thursday, March 09, 2017 5:24 PM
To: Senn, John <Senn.John@epa.gov>

Subject: FW: VW Plea Hearing on Friday

Sent from my Windows Phone

From: Barnet, Henry
Sent: 3/9/2017 12:48 PM
To: Schwab, Justin; Cozad, David
Cc: Starfield, Lawrence
Subject: VW Plea Hearing on Friday

We briefed you on this last week, but again highlighting this may get national press (although less intensity as the corporate plea was announced back in January by the Attorney General). There will be a Press Release, we are waiting to see if Agency comment is warranted.

<https://www.justice.gov/opa/pr/volkswagen-ag-agrees-plead-guilty-and-pay-43-billion-criminal-and-civil-penalties-six>

Volkswagen AG - Eastern District of MI

A change of plea hearing is currently scheduled for Mar 10, 2017 in the EDMI at which it is expected that VW AG will enter a guilty plea. Sentencing is expected to occur roughly two weeks later.

Henry E. Barnet, Director

Office of Criminal Enforcement, Forensics & Training
U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, N.W.

WJC South Room 1211

Washington, D.C. 20004

202.564.2480

To: Schnare, David[schnare.david@epa.gov]
Cc: Vizian, Donna[Vizian.Donna@epa.gov]
From: Showman, John
Sent: Mon 3/13/2017 8:23:00 PM
Subject: Word Version of Evaluation Criteria
Developing Evaluation Criteria revised final.docxfeb17.docx

As requested! ☺

From: Binder, Bruce
Sent: Monday, March 13, 2017 4:21 PM
To: Showman, John <Showman.John@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>; Polk, Denise <Polk.Denise@epa.gov>
Subject: Evaluation Criteria

John, here is a word version of the evaluation document. Thanks.

Bruce S. Binder

United States Environmental Protection Agency

Office of Grants and Debarment

Senior Associate Director for Grants Competition

202-564-4935

Personal Phone/Ex. 6

February, 2017

DEVELOPING EVALUATION CRITERIA/RANKING FACTORS

When preparing competitive announcements, attention needs to be placed on carefully developing and drafting the Section V ranking criteria. Often, criteria are written in terms of what the applicants must include in their proposals rather than what is being evaluated. For example, a criterion may say that: "Applicants must show in their proposal how they possess the requisite capabilities, staff, resources, and equipment to successfully perform the project." This is not the correct manner to write evaluation criteria; this type of statement would belong in Section IV of the announcement informing applicants what to include in their proposal. The criteria must be written in terms of what is being evaluated--in the example above, the criteria should be written as follows: "Applicants will be evaluated based on the extent their proposal demonstrates that they have the capabilities, staff, resources, and equipment to successfully perform the project." **In short, Section V ranking criteria must be written in terms of what is going to be evaluated and how, not what type of information should be included in proposals (this belongs in Section IV). The proposal instructions in Section IV must describe the type of information applicants must submit and this information must relate to the evaluation factors in V.**

Program Offices must develop the Section V evaluation criteria to fit the specific program/project requirements (including any statutory/regulatory requirements), goals and objectives set forth in the announcement. Most competitive announcements identify certain priorities that proposals should address and the evaluation criteria should relate to those priorities (e.g., evaluating how well the proposals address the priorities). The criteria should relate to the areas of importance in the announcement, the nature of the projects being solicited, and enable a meaningful comparison of proposals.

Generally, evaluation criteria fall into three categories. First, for certain programs (e.g., Brownfields, DERA, Pollution Prevention), there are certain evaluation criteria required by law/regulation—offices must ensure that any legally required evaluation criteria are included in announcements. Second, there are evaluation criteria required by EPA policy which must be included in announcements (e.g., Environmental Results Policy, EPA Order 5700.7; Non-Profit Policy, EPA Order 5700.8; and GPI 12-06, Timely Obligation, Award and Expenditure of EPA Grant Funds). Third, there are then those evaluation criteria that a program office determines are appropriate for use in a competition (e.g., technical approach, budget, innovation, leveraging)— these are typically at the discretion of the program office.

Open EPA solicitations can be found by using [the search function](#) at Grants.gov and selecting "All Environmental Protection Agency" in the Agency filter. Each opportunity has a synopsis, application package, and attached funding opportunity document. You can review these open solicitations for inspiration for evaluation criteria. In addition, the Grants Competition Advocate's website has sample announcements and also includes information on criteria to include in announcements.

http://intranet.epa.gov/ogd/competition/compet/competition_model_announcements.htm

Below you will find a table of contents of criteria organized by category.

Contents

I.	Required by Statute/Regulation.....	3
II.	Evaluation Criteria Required by EPA Policy.....	3
a.	EPA Order 5700.8 “EPA Policy on Assessing Capabilities of Non-Profit Applicants for Managing Assistance Awards”: programmatic capability factor (see factor under II.b. below).....	3
b.	EPA Order 5700.7 “Environmental Results Under Assistance Agreements”	3
c.	Timely Obligation, Award and Expenditure of EPA Grant Funds (GPI 12-06).....	4
d.	Sustainability in EPA Assistance Agreements (GPI 17-01).....	4
III.	Other Typical Evaluation Criteria Included in Announcements.....	4
a.	TECHNICAL APPROACH/DESIGN RELATED CRITERIA:.....	5
b.	ENVIRONMENTAL JUSTICE CONSIDERATIONS:.....	5
c.	BUDGET.....	7
d.	VOLUNTARY COST SHARE AND COST LEVERAGING.....	7
e.	Green [or Environmentally Friendly] Jobs.....	7
f.	JOB CREATION.....	7
g.	CLIMATE CHANGE :	8
h.	COMMUNITY BASED GRANTS.....	8
	Community-based organizations involvement in project.....	9
	Definition of community-based organization for Section I:.....	9
	Section IV Proposal Instruction:.....	9
	Section V Evaluation Factor:.....	10
i.	Livability/Sustainability/Community Involvement Factors.....	11
	Section I. Introduction/Background.....	11
	Section IV. Proposal Information/Instructions.....	12
	Section V. Evaluation Rating Criteria.....	14
j.	OTHER FACTORS:.....	14
	Use of Other Factors in Regional/National Competitions.....	15

I. Required by Statute/Regulation

Some programs such as Brownfields, DERA, and Pollution Prevention have evaluation criteria required by law/regulation. Programs with any legally required evaluation criteria must ensure they are included in competitive announcements.

II. Evaluation Criteria Required by EPA Policy

There are certain criteria required to be included in announcements under various EPA policies. This includes the following:

a. EPA Order 5700.8 "EPA Policy on Assessing Capabilities of Non-Profit Applicants for Managing Assistance Awards"
programmatic capability factor (see factor under II.b. below)

b. EPA Order 5700.7A1 "Environmental Results Under Assistance Agreements"

environmental results factors – plan for tracking progress towards achieving results and environmental results past performance (which is covered in the Past Performance and Programmatic Capability factor below)

Environmental Results-Applicants will be evaluated based on their plan and approach for measuring their progress towards achieving the expected project outcomes and outputs including those identified in Section I....of the announcement.

PAST PERFORMANCE AND PROGRAMMATIC CAPABILITY FACTORS:

In the past, programmatic capability and environmental results past performance have been separate clauses in both sections IV and V of announcements. This is largely due to the fact that they are based on different policies and became effective at different points in time in 2005 and 2006. However, in order to streamline and simplify matters below are links to proposed model clauses (which can be modified as appropriate) consolidating the programmatic capability and environmental results past performance requirements into one Section IV proposal instruction clause (and below into one evaluation factor in Section V). Further, while offices usually ask for applicant past performance information based on prior federally funded assistance agreements, offices can broaden this to include non-federally funded assistance agreements as well at their discretion. In addition, the Grants Competition Advocate's website has further guidance on the Past Performance Evaluation.

Review the GCA's Announcement Boilerplate Provisions and Guidance for Past Performance and Programmatic Capability language. In addition, read the Past Performance Evaluation Guidance.

Note to Offices Regarding Past Performance Evaluation:

Under the standard past performance and programmatic capability instruction and evaluation factor included in solicitations, applicants with no past performance information who indicate

this in their proposal are supposed to receive a neutral score. This means that for those applicants each reviewer should be giving them a neutral score--because they have indicated they do not have past performance information. There should not be cases where, for past performance, one reviewer gives a neutral and one gives a different score. For those applicants who indicate in their proposal that they have no past performance information, all reviewers should be giving them a neutral score. If that doesn't happen then that will raise evaluation issues. Reviewers and panel chairs need to be alert to this.

c. Timely Obligation, Award and Expenditure of EPA Grant Funds (GPI 12-06)

All Program Offices conducting assistance agreement competitions must include the following evaluation factor (or one substantially similar) in Section V of competitive announcements. The announcement will also require the applicant to address this factor in their proposal. Program Offices must assign the appropriate value for this factor (e.g., points or weight value) based on the nature of the competition and the importance of other evaluation factors.

Expenditure of Awarded Grant Funds (...points)

Under this criterion, applicants will be evaluated based on their approach, procedures, and controls for ensuring that awarded grant funds will be expended in a timely and efficient manner.

d. Sustainability in EPA Assistance Agreements (GPI 17-01)

From Section 8 of the Sustainability policy:

For competitive assistance agreements, Program Offices must consider, based on the nature and subject matter of the competition, whether to include sustainability considerations in their EPA competitive solicitations. If a Program Office includes such considerations in the solicitation, it will need to address them in Section I of the solicitation, have applicants address them in their proposals, and include evaluation criteria relating to them in Section V of the solicitation. If a Program Office includes sustainability considerations in the solicitation and decides to hold a webinar or conference call following solicitation issuance, and before the proposal submission deadline, the Program Office should discuss the importance of sustainability considerations to the competition.

Sustainability considerations are listed in Section 7 of the Sustainability Policy.

III. Other Typical Evaluation Criteria Included in Announcements

Below are some sample categories of criteria that may be appropriate for your announcement and competition:

a. TECHNICAL APPROACH/DESIGN RELATED CRITERIA:

1. *TECHNICAL APPROACH: Evaluate the applicant's technical approach for performing the project including its feasibility, schedule, milestones, and whether it is realistic.*
2. *SIGNIFICANCE: Evaluate how the proposed project will support or benefit the public or advance scientific knowledge and the relationship of the proposed project to the seriousness, extent, and urgency of the environmental problems toward which the project is directed. Also, evaluate proposals on the extent to which they demonstrate the anticipated public benefits to be derived from the project and describe the degree to which the project can be expected to produce results that will have general application to national pollution control problems.*
3. *FEASIBILITY/APPROACH: If project design is important to expected outcomes, evaluate proposals based on the conceptual framework, design, methods, technical approach, and analyses. Consider whether the approach is adequately developed, integrated, and appropriate to the goals of the program/project and whether there are potential problem areas.*
4. *INNOVATION: Request applicants to highlight concepts, approaches, methods, or combinations of expertise related to their proposals and evaluate them on this basis. Describe any challenges directed at existing paradigms, methodologies, or technologies. Suggest appropriate focus, strategies, and procedures.*
5. *KEY PERSONNEL: Evaluate applicants based on the background, expertise, qualifications, availability, experience, and training of key personnel who will work on the project. If relevant, request applicants to provide appropriate biographical sketches and information on the availability of key personnel (this may also be evaluated under the programmatic capability factor).*
6. *RELEVANCE: Evaluate proposals based on whether they are relevant to the proposed project objectives described in the solicitation/announcement.*
7. *PERFORMANCE MEASURES AND RESULTS: Evaluate how the project will meet any relevant performance measures and will attain successful outcomes benefitting the public.*
8. *SUSTAINABILITY: Evaluate whether the project results are sustainable and can be continued after project completion.*

b. ENVIRONMENTAL JUSTICE CONSIDERATIONS:

Below are several sample environmental justice related evaluation criteria that offices can use in solicitations-only one should be used. If used, offices must describe why environmental justice considerations are important to the projects in Section I of the solicitation and require in Section IV that applicants address the environmental justice issues in their proposals. Solicitations that will evaluate environmental justice considerations should (in Section I of the solicitation) define environmental justice consistent with its definition in Plan EJ 2014, Section 1.2. In addition, clauses involving environmental justice considerations may raise legal issues so offices must consult with the OGC Civil Rights and Finance Law Office if they want to make any substantive changes to the model clauses below. Therefore, please consult with the GCA's Office and OGC before making any substantive changes to these clauses.

1. *Environmental Justice. Proposals will be evaluated based on the extent to which the applicant can demonstrate how the proposed project will effectively address adverse/negative environmental impacts resulting from industrial, governmental, and/or commercial operations or programs that disproportionately impact or affect or have impacted or affected communities and/or other vulnerable populations including but not limited to those with minority, tribal, and/or low income populations. This also includes the extent to which such communities and/or populations will have an appropriate opportunity to participate meaningfully in the project, including providing input into its design and implementation. Factors indicating disproportionate impacts include: differential proximity and exposure to environmental hazards; greater susceptibility to adverse effects from environmental hazards (due to causes such as genetic predisposition, age, chronic medical conditions, lack of health care access, or poor nutrition); unique environmental exposures because of practices linked to cultural background or socioeconomic status (for example, subsistence fishing or farming); cumulative effects from multiple stressors; reduced ability to effectively participate in decision-making processes (due to causes such as language barriers, inability to access traditional communication channels, or limited capacity to access technical and legal resources); and degraded physical infrastructure, such as poor housing, poorly maintained public buildings (e.g., schools), or lack of access to transportation.*
2. *Under this criterion, proposals will be evaluated based on the extent they demonstrate how the project will help identify and reduce threats to human health and the environment, and improve the welfare of sensitive and vulnerable populations (such as children, pregnant woman, and the elderly), and others, including minority, low-income, and tribal community residents, living in areas that face, or historically have faced, a disproportionate level of environmental degradation, disease, or conditions suspected from contaminant exposures.*
3. *Under this criterion, proposals will be evaluated based on the extent to which the project will benefit communities and/or populations that are, or historically have been, more adversely, disproportionately and/or historically impacted by environmental issues and problems than other communities because of geography, poverty, age, income levels and similar types of factors. This also includes the extent to which such communities and/or populations will have an appropriate opportunity to meaningfully participate in the project, including providing input into its design and implementation.*

Note: Factors potentially indicating disproportionate impacts include: differential proximity and exposure to environmental hazards; greater susceptibility to adverse effects from environmental hazards (due to causes such as genetic predisposition, age, chronic medical conditions, lack of health care access, or poor nutrition); unique environmental exposures because of practices linked to cultural background or

socioeconomic status (for example, subsistence fishing or farming); cumulative effects from multiple stressors; reduced ability to effectively participate in decision-making processes (due to causes such as language barriers, inability to access traditional communication channels, or limited capacity to access technical and legal resources); and degraded physical infrastructure, such as poor housing, poorly maintained public buildings (e.g., schools), or lack of access to transportation.

4. *Under this criterion, the Agency will evaluate the extent to which the proposed project helps to promote addressing environmental justice issues and concerns (See Section I) including but not limited to how it will help to minimize and/or reduce exposures and negative impacts of environmental risks to communities (including but not limited to minority, low-income, and tribal communities) that are or have been adversely affected (e.g., higher rates of medical problems due to environmental factors) by such risks than other communities.*

c. BUDGET

Evaluate the reasonableness and adequacy of the proposed budget and requested period of support relative to the proposed work.

d. VOLUNTARY COST SHARE AND COST LEVERAGING

In appropriate cases, an applicant's ability to leverage additional funds or resources to complete or complement the project may be evaluated. Consult the GCA's website for information on leveraging. Leveraging is not appropriate in all competitions. And there are issues depending upon the type of leveraging used (e.g., voluntary cost share/over match vs. other types of leveraging).

http://intranet.epa.gov/ogd/competition/compet/competition_cost_share_threshold.htm

e. Green [or Environmentally Friendly] Jobs

Under this criterion, the Agency will evaluate the extent to which the applicant demonstrates that the project will help support and/or create existing or new jobs that devote a substantial portion of their work to improving energy efficiency, increasing the supply of renewable energy, and/or preventing, reducing, or cleaning up pollution.

f. JOB CREATION

Applications will be evaluated based on the extent to which the applicant can demonstrate how the proposed project will effectively facilitate and/or promote job creation as part of effective and efficient project implementation.

g. CLIMATE CHANGE

Program offices, as appropriate, may include evaluation criteria focusing on climate change in applicable solicitations. If so, in Section I of the solicitation they must address why climate change is important and relevant to the type of projects being solicited. For instance, they may say something to the effect that, "Climate change poses risks to human health, the environment, cultural resources, the economy and quality of life. These changes are expected to create further challenges to protecting human health and welfare and the environment. Under this solicitation applicants should address how climate change.....[specific to each announcement offices will need to describe why climate change is important and how they want applicants to address it in their proposals]. Below are sample climate change related evaluation criteria. The first one is a general criteria and the other one focuses on climate change adaptation-offices should use one or the other but not both. Program offices should discuss with their management the use of any climate change related criteria.

1. *Climate Change*

Under this criterion, proposals will be evaluated based on the quality and extent to which the applicant demonstrates how and why their project will help protect human health and the environment and help communities and ecosystems become more sustainable and resilient to the effects of climate change.

2. *Climate Change Adaptation (Option 1):*

Proposals will be evaluated based on the quality and extent to which they describe how the project addresses the climate change adaptation considerations described in Section I of the announcement to help ensure that the project achieves its expected outcomes even as climate changes

3. *Climate Change Adaptation (Option 2):*

Proposals will be evaluated based on the quality and extent to which they describe how the project will enhance and increase the ability of state, tribal and/or local decision makers, and the resilience of communities and ecosystems, to climate change by increasing their ability to anticipate, prepare for, respond to, and recover from the impacts of a changing climate.

h. COMMUNITY BASED GRANTS

Below are sample evaluation criteria and solicitation language focusing on assessing community involvement in project performance. The first one is more detailed and comprehensive than the others and includes an environmental justice element which may be preferable to some offices instead of having separate community and environmental justice criteria. The last two sample criteria are short and simple and may be easier to implement for some offices.

Community-based organizations involvement in project

Under some competitions it may be appropriate to evaluate the extent to which applicants

will involve, and engage with, community-based organizations in project performance. In order to evaluate this it is necessary to define the term “community- based organization” in Section I of the announcement and describe the type of community- based involvement in project performance that is desired. Below is a sample definition of community-based organization and proposal/evaluation clauses that can be used or tailored as necessary. .

Definition of community-based organization for Section I:

As used in this announcement, a “community-based organization” generally means a non-governmental organization that has demonstrated effectiveness as a representative of a community or a significant segment of a community and that helps members of that community or segment obtain environmental, educational, or other social services. A community-based organization must be a nonprofit or not for profit corporation in good standing under state or tribal law with authority to enter into binding legal agreements. The community-based organization need not be tax exempt under the Internal Revenue Code but may use documentation of tax exempt status to demonstrate that is a nonprofit. Such organizations may include, for example, those representing communities with environmental justice concerns. The term “environmental justice concerns”, as used in this solicitation, generally relate to issues that have resulted in some communities and/or populations being more adversely, disproportionately and/or historically impacted by environmental issues and problems than other communities because of geography, poverty, income levels and similar types of factors.

Note: Factors potentially indicating disproportionate impacts include: differential proximity and exposure to environmental hazards; greater susceptibility to adverse effects from environmental hazards (due to genetic predisposition, age, chronic medical conditions, lack of health care access, or poor nutrition); unique environmental exposures because of practices linked to cultural background or socioeconomic status (e.g., subsistence fishing or farming); cumulative effects from multiple stressors; reduced ability to effectively participate in decision-making processes (due to language barriers, inability to access traditional communication channels, or limited capacity to access technical and legal resources); and degraded physical infrastructure, such as poor housing, poorly maintained public buildings (e.g., schools), or lack of access to transportation.

Section IV Proposal Instruction:

Community Based-Focus: Demonstrate how the proposed project will address the needs and concerns of (1) local communities, including any communities or populations that have faced or are facing environmental justice concerns (as defined in Section I) and/or (2) other interested parties, groups, or populations that are, or have been, affected by the environmental and/or other issues that the project is intended to address. Demonstrate how you will engage and work with community-based organizations (as defined in Section I of this announcement) and other appropriate parties to enhance project effectiveness and/or efficiency including your plans for making subawards, as necessary and appropriate, to community-based organizations and others to enhance project effectiveness and/or efficiency. Applicants, not EPA, select their subawardees and the Applicant must demonstrate

in its proposal that the community-based organization(s) or other groups are willing to accept the subaward and have the capacity to effectively administer and perform the agreement. Selected applicants who propose to make subawards, including those to community-based groups, must follow proper procedures in making subawards and will be expected to make the subawards consistent with their application. The award will include a term and condition requiring the applicant to make the subawards consistent with their application.

Section V Evaluation Factor:

1. Community-Based Focus:

Under this criterion, applicants will be evaluated based on the quality and extent to which their proposal demonstrates how the proposed project will address the needs and concerns of local communities, including any communities or populations that have faced or are facing environmental justice concerns (as defined in Section I), and other interested parties, groups, or populations that are affected, or have been affected, by the environmental and/or other issues that the project is intended to address. This includes evaluating the quality and extent to which the applicant demonstrates how it will engage and work with community-based organizations and other appropriate parties to enhance the effectiveness and/or efficiency of the project and/or the applicant's plans for making subawards, as necessary and appropriate, to community-based organizations to enhance project effectiveness and/or efficiency. Applicants, not EPA, select their subawardees and the Applicant must demonstrate in its proposal that the community-based organization(s) are willing to accept the subaward and have the capacity to effectively administer and perform the agreement. Selected applicants who propose to make subawards, including those to community-based organizations, must follow proper procedures in making subawards and will be expected to make the subawards consistent with their proposal. The award will include a term and condition requiring the applicant to make the subawards consistent with their proposal.

2. Achieving Project Outcomes that Benefit the Community

Under this criterion, proposals will be evaluated based on the extent to which the project will result in outcomes and results that benefit communities affected by the project, including improvements to human health and the environment, the local economy, social conditions, and the welfare of residents in such communities. In addition, proposals that clearly articulate how progress towards achieving the outcomes will be measured and/or demonstrate that the applicant will be able to leverage additional resources from other sources to help achieve the project outcomes and create benefits for the community within the project area may be evaluated more favorably than others.

3. Community Engagement and Partnerships

Under this criterion, proposals will be evaluated based on the effectiveness of the applicant's plan for engaging local communities with respect to the design and performance of the project and obtaining support from project partners to more effectively perform the project. Applicants will be evaluated on their approach for

incorporating community input throughout the design and performance of the project. Community engagement and partnership efforts should include various organizations representing a broad spectrum of the community; examples include grassroots, neighborhood, school, faith-based, city council, business, local government, and other organizations. Proposals that can demonstrate recent involvement of project partners and community members working together on projects may be evaluated more favorably than others. Proposals with letters of commitment that demonstrate strong, long-term involvement throughout the project from a variety of project partners may also be evaluated more favorably than others.

Note: Items 1, 2, and 3 above are evaluation factors that would go in Section V of the solicitation. In Section IV of the solicitation offices need to instruct applicants to include information pertaining to these criteria in their proposals.

i. Livability/Sustainability/Community Involvement Factors

These factors are based on the DA's December 2012 memo on Aligning Resources among Federal agencies (and follow-on memo) with the objective being that agencies that have similar programs may want to include common language in their solicitations. EPA worked with HUD and DOT to align federal resources and improve environmental outcomes from development. As indicated in the memo, the three agencies use a common set of "livability" principles to better coordinate their efforts and investments in a manner that will better protect the environment, promote equitable development and help address the challenges of a changing climate. Offices should include these livability and sustainability related instructions and criteria in applicable solicitations (e.g., Brownfields). These clauses should not be substantively changed because they resulted from agreements with other agencies to include common language in applicable solicitations. However, if only certain elements of these clauses and criteria are relevant to a particular competition then offices should only use those elements and do not have to use the entire package of clauses and criteria.

Section I. Introduction/Background

Projects awarded under this competition are expected to help American communities grow, develop, and invest in infrastructure in ways that achieve economic prosperity, improve health, and create healthy, environmentally sustainable, and opportunity-rich communities for all Americans, including minorities, low-income and tribal communities. Recognizing the fundamental role that public investment plays in achieving these goals, HUD, DOT, and EPA are working together to coordinate and incorporate the Livability Principles described below, and other community oriented elements, into applicable funding programs to the maximum extent practicable. The Livability Principles include: (1) Provide more transportation choices, (2) Promote equitable, affordable housing, (3) Increase economic competitiveness, (4) Support existing communities, (5) Leverage federal investment, and (6) Value communities and neighborhoods. [See www.sustainablecommunities.gov to learn more about the Livability Principles.] In addition, the three agencies have worked together to develop evaluation criteria

(to be included in Section V of the solicitation) to assess how proposed projects address livability principles, community planning, and community involvement/improvement factors under applicable programs at the three agencies.

Section IV. Proposal Information/Instructions

Applicants should address the following items in their proposals:

A. Adherence to the Livability Principles

Applicants should demonstrate how the proposed project activities advance the following principles:

- Provide more transportation choices: Develop safe, reliable, and economical transportation choices to decrease household transportation costs, reduce our nation's dependence on foreign oil, improve air quality, reduce greenhouse gas emissions, and promote public health.
- Promote equitable, affordable housing: Expand location and energy-efficient housing choices for all people to increase mobility and lower the combined cost of housing and transportation.
- Enhance economic competitiveness: Improve economic competitiveness through reliable and timely access to employment centers, educational opportunities, as well as expanded business access to markets and services for workers.
- Support existing communities: Target federal funding toward existing communities—through strategies like transit-oriented, mixed-use development and land recycling—to increase community revitalization and the efficiency of public works investments and safeguard rural landscapes.
- Coordinate and leverage federal policies and investment: Align federal policies and funding to remove barriers to collaboration, leverage funding, and increase the accountability and effectiveness of all levels of government to plan for future growth, including making smart energy choices such as locally generated renewable energy.
- Value communities and neighborhoods: Enhance the unique characteristics of all communities by investing in healthy, safe, and walkable neighborhoods—rural, urban, or suburban applicants may use the following indicators, and any additional ones, to illustrate how the proposed project advances the livability principles listed above:
 - Total percentage of people commuting via walking, biking or transit
 - Combined Housing + Transportation costs as a proportion of median income
 - Percentage of children living below the poverty line/ High school graduation rate/ Percentage of population with health insurance (used in combination)
 - Percent of low-income households living within a 30-minute transit commute of a major employment center
 - Percent of regional employment accessible to low-income households within a 90-minute transit commute
 - Percent of population living within Areas of High Opportunity
 - Economic output per unit of energy consumption
 - Net acres of agricultural and natural resource land lost annually to development, per new resident

- Adequate Infrastructure Maintenance Investment Ratio
- Percent of new housing units (or commercial space) built in previously developed areas.

B. Connection to Existing Integrated Planning Processes

Applicants should describe in their proposals the connection between the proposed project activities and any applicable integrated neighborhood, local, city or regional land use planning efforts. The proposal should describe the degree to which the planning process includes sustainability (or livability) as a primary goal, and describe how the community planning effort includes one or more of the following characteristics:

- integrated consideration of housing, transportation, health and environmental impacts from development alternatives;
- extensive community engagement through public meetings and other means, particularly with historically underrepresented and overburdened populations;
- use of environmental, health and economic data to forecast the impacts of different development approaches (including use of indicators of community need to the degree possible);
- involvement of multijurisdictional partnerships that commit to adopting integrated plans, strategies, and management tools emerging from the planning process;
- greater transparency and accountability for the public in planning and implementation efforts; and
- commitment by strong alliances of residents and local/regional interest groups to maintain a long-term vision for the community/region over time while supporting progress through incremental sustainable development practices.

If the applicant is seeking funds for a planning effort, they should describe how it complements and does not duplicate other planning efforts.

C. Inclusion of Community in Project

Applicants should demonstrate in their proposal how community residents, including communities and/or populations that historically have not engaged in the environmental conversation and/or overburdened populations and other interested parties, will be involved in the project for which the applicant is seeking funding. The manner of community involvement may include but is not limited to: participation in public information sessions, charrettes, or other planning meetings about the project; or engagement of broad-based community organizations and groups that represent housing, mobility, health and/or environmental concerns in the design and/or performance of the project, or as primary beneficiaries of the project, especially those in which the project is meant to improve community access to jobs, housing, transportation options, health care, health amenities or open space. Applicants should submit with their proposals support letters from representative organizations and include a discussion on the specific means by which they will engage area residents and other interested parties in project performance as evidence of active community involvement.

Section V. Evaluation Rating Criteria

A. *Adherence to the Livability Principles*

Applicants will be evaluated based on the quality and extent to which they demonstrate that

the proposed project will advance one or more of the livability principles discussed in Sections I. and IV. of the solicitation. Proposals may score better under this criterion based on the number of livability principles that will be advanced by the project.

B. Connection to Existing Integrated Planning Processes

Applicants will be evaluated based on the quality and extent to which the project is connected to a planning process that meets the characteristics described in Section I.-- and IV. of the announcement. Under this criterion, proposals that demonstrate that the project is a central or core feature in the implementation of the planning process, and therefore able to catalyze or stimulate other similar activities, may be evaluated more highly than those that do not demonstrate this.

C. Inclusion of Community in Project Performance

Applicants will be evaluated based on the quality and extent to which the proposal demonstrates that community organizations and other groups and interested parties will be involved in the performance of the project including but not limited through the means identified in Sections I. and IV. of the solicitation. Proposals which demonstrate the ability to improve the involvement and quality of life of populations and communities that historically have not engaged in the environmental conversation, overburdened populations, communities that bear or have historically borne disproportionate negative impacts from development and/or pollution, traditionally disenfranchised residents, and/or other interested parties may be evaluated more favorably under this criterion.

These indicators have been selected to provide a measure of both the need of the communities in terms of socio-economic and environmental challenges, as well as their ability to track progress toward several of the livability principles. For example, more housing units built on previously developed land supports more efficient use of existing infrastructure, neighborhood redevelopment, and preservation of sensitive land and watersheds.

j. OTHER FACTORS:

In addition to the scored ranking criteria, offices may identify other factors in the announcement that will be used by the selection official to make selection decisions such as:

- The availability of funds.
- Programmatic priorities.
- Geographic location/balance.
- Project diversity
- Similarity of the project to other projects already being funded by EPA
- Organizational diversity in terms of applicant type selected for award (e.g., states, tribes, non-profits, colleges) in order to ensure a broad representation of entities receiving awards to improve program effectiveness.

PLEASE NOTE THAT ANY USE OF RACE-BASED TYPE CONSIDERATIONS MAY RAISE LEGAL ISSUES THAT MUST BE DISCUSSED WITH OGC.

Typical Other Factors Clause (modify as appropriate):

Other Factors: Final funding decisions will be made by the Selection Official based on the rankings and preliminary recommendations of the EPA evaluation team. In addition, in making the final funding decisions, the Selection Official may also consider programmatic priorities, geographic diversity of funds, and the availability of funds. Once final decisions have been made, a funding recommendation will be developed and forwarded to the EPA Award Official.

When “other factors” are used to make selections out of rank order this must be documented and explained in the selection documentation. Selections can only be made based on the criteria in the announcement.

Use of Other Factors in Regional/National Competitions.

Please note that in the context of a regional or national competition the geographic diversity "other factor" is not intended to be used as a means for an office to simply fund the top ranked proposals for each state in a region (under a regionally based competition) or top ranked proposals for each region (under a national competition). If an office wants to conduct a competition in this manner to select the top ranked proposal from each state or each region then they should specifically state this in Section V of the announcement to be transparent and fair to applicants--they also have to ensure that the top ranked proposals from each state or region are good, quality proposals and that there is funding for the top ranked proposals. Using the geographical diversity other factor to try to accomplish this is problematic and is not what the factor is intended for and should not be used for this purpose. In addition, an office cannot fund a proposal solely because it was the top one from a state or region-it still has to be a quality and meritorious proposal.

Below is sample language that can be used for this purpose that would be included in Section V of announcements. It has to be tailored to the specific competition.

1. *For Regionally Based Competitions*

Under this competition, EPA also reserves the right to fund the top ranked proposal for each state in Region....contingent on the quality of the proposal and funding availability.

2. *For National Competitions: Under this competition, EPA also reserves the right to fund the top ranked proposal for each region contingent on the quality of the proposal and funding availability.*

Also see additional guidance on use of Other Factors.

To: Schnare, David[schnare.david@epa.gov]
From: Smith, Loren (OST)
Sent: Tue 3/7/2017 6:48:42 PM
Subject: Re: Mid-Term

Will have very shortly.

Sent from my iPhone

On Mar 7, 2017, at 1:46 PM, Schnare, David <schnare.david@epa.gov> wrote:

Pruitt wants to know where the Notice is.

Here's an interesting article:

E&E News

<http://www.eenews.net/greenwire/2017/03/07/stories/1060051074>

Enviros, lawmakers try to head off regulatory rollbacks

By Camille von Kaenel 3/7/17

Environmental groups, lawmakers and national security advocates are trying to pre-empt any administration move to soften fuel economy standards by warning that such action would be caught up in lengthy litigation and create uncertainty for automakers.

As early as this week, U.S. EPA and the Transportation Department will begin reconsidering whether to loosen vehicle emissions standards by restarting a review that the Obama administration finalized in its final days.

The Trump administration is also considering revoking California's waiver to set its own, stronger vehicle emission rules, according to several media reports.

California, plus 12 states that have followed its lead, are ready to engage in a lengthy court battle to protect the status quo, environmental advocates warned.

There is no precedent or clause in the Clean Air Act for revoking a waiver that has already been granted. California leaders, including state Senate President Pro Tem Kevin de León (D), have vowed a fierce fight.

"California and other states would have a very strong legal counterattack, which also illustrates why this whole change in course is so counterproductive," said Ken Kimmell, president of the Union of Concerned Scientists.

"All it's going to do is tie everything up in litigation and put automakers in a worse place, which is having uncertainty on whether they need to meet these 2025 standards," he said.

'Swerving off a cliff'

It's unlikely that restarting the so-called midterm review — which would open the possibility for EPA to loosen existing 2025 targets for vehicle emissions — could itself be subject to legal challenge.

Still, the Obama administration's decision to close the review in an attempt to lock in 2025 rules turned the process into a lightning rod.

Twelve Democratic senators warned EPA Administrator Scott Pruitt in a letter today that reopening the review would "weaken our energy security, harm consumers, and increase global warming pollution."

They also said the move would "create needless uncertainty for the auto industry and hinder the industry's ongoing process."

Sen. Ed Markey (D-Mass.), who co-authored the 2007 legislation to increase fuel economy, told reporters during a conference call that "Auto companies want the standards to ease, but by jumping in a speeding car with the Trump administration, they're putting themselves in danger of swerving off a cliff."

Neither automakers nor the administration have signaled what outcome they want from the review, other than putting it back on schedule for completion by April 2018.

Car companies have long wanted to eliminate slight differences between the standards put forward by EPA, the National Highway Traffic Safety Administration and the California Air Resources Board to avoid any uncertainty.

Environmental advocates decried any possibility that the targets would ultimately be loosened, which would require a new rule. Greens said they would expect opposition to extend beyond the normal rulemaking process.

"If the Trump administration does want to weaken the standards, you can count on the fact that states would want to keep them and would join in a lawsuit to maintain them," said Kimmell.

The administration would have to put forward significant new data to back a conclusion different from the one by the Obama administration to overcome legal challenges, he said.

'Snapback'?

EPA, in a massive technical report last summer, found that automakers could continue to meet and exceed the standards with available and impending technologies at little extra cost, echoing a similar finding by the National Academies of Sciences, Engineering and Medicine.

Automakers say those findings do not take changing consumer preferences for big trucks over small, fuel-efficient cars enough into account.

Dan Becker, director of the Safe Climate Campaign, also warned about the possibility of a "snapback" to tighter rules after the Trump administration.

Securing America's Future Energy CEO Robbie Diamond, who advocates for fuel economy standards as a way of boosting national security and reducing dependence on foreign oil, warned that "just fighting court cases" might get in the way of reducing greenhouse gas emissions.

"California and the government should be fighting [OPEC] together," he said. "If we fight each one of these battles — who should regulate, and why should they regulate, or how many years should it be — each of these battles takes time, and we will ultimately lose the war."

Diamond said he has advised administration officials to use the new review to look at regulating transportation as a whole rather than just on a vehicle-by-vehicle basis.

The goal would be to better take into account the environmental and fuel-use benefits of autonomous vehicles and ride-sharing networks. The plan includes some relief for automakers and early planning for rules beyond 2025.

"Going back to the normal schedule is not the end of the world, but it can be used as an opportunity to bring new technologies to the table to be folded into the standards," said Diamond.

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Hull, George[Hull.George@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Gaines, Cynthia
Sent: Thur 3/9/2017 10:27:02 PM
Subject: Daily Reading File: March 9, 2017
[Daily Reading File.3.9.17.pdf](#)

To: Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Schnare, David[schnare.david@epa.gov]
Cc: Kenny, Shannon[Kenny.Shannon@epa.gov]; Kime, Robin[Kime.Robin@epa.gov]
From: Rees, Sarah
Sent: Mon 3/6/2017 11:12:47 PM
Subject: Revised FR Queue list
FR Packet 3.8.2017rev1.docx
FR queue 3.8.2017_shortSortrev1.xlsx

Hi folks – I’ve attached the following materials:

- A revised FR queue list – current as of today.
- A list of FR notices that have upcoming deadlines for action. There are 23 of them through the end of the month. Happy to discuss any of these; I would focus on the ones that are highlighted. Happy to provide further information as needed.

Samantha, I’ve left a hard copy on Robin’s chair.

Cheers,

Sarah

Sarah L. Rees, Ph.D.

Director, Office of Regulatory Policy & Management

US EPA – Office of Policy

(202) 564-1986 (o) | Personal Phone/Ex. 6 (m)

From: Burton, Tamika
Location: WJC-N 3415
Importance: High
Subject: Canceled: Hot Issues Check-in
Categories: Record Saved - Shared
Start Date/Time: Thur 3/9/2017 8:00:00 PM
End Date/Time: Thur 3/9/2017 8:30:00 PM

To: Flynn, Mike[Flynn.Mike@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Grantham, Nancy
Sent: Thur 3/9/2017 10:20:16 PM
Subject: FW: Eagle Industries Superfund Letter
Governor's EPA Letter Eagle Industries Superfund.pdf

Fyi ..thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Gray, David
Sent: Thursday, March 09, 2017 5:19 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>
Cc: Coleman, Sam <Coleman.Sam@epa.gov>
Subject: Eagle Industries Superfund Letter
Importance: High

All – I just got a call from Oklahoma Environmental Secretary's office. They messed up and missed a deadline to process a letter from the Governor to propose listing Eagle Industries to the NPL. The letter is attached. They are hopeful that the site can make the upcoming NPL.

David



Mary Fallin
Governor

March 8, 2017

Mr. Samuel Coleman
Acting Regional Administrator
U.S. Environmental Protection Agency, Region VI
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Subject: Proposal for inclusion of the Eagle Industries (OKN000607068), Oklahoma County,
Oklahoma on the National Priorities List (NPL)

Dear Mr. Coleman:

This letter is in response to the U.S. Environmental Protection Agency's (EPA) request for concurrence from the State of Oklahoma for the proposal to include the Eagle Industries Site on the NPL.

The State of Oklahoma believes that the site is eligible for inclusion on the NPL, as indicated by the Department of Environmental Quality (DEQ) investigations. Use of Superfund is the most viable mechanism available to pay for the remediation. The ground water surrounding the site is contaminated with chlorinated solvents which are currently impacting the drinking water wells of several nearby homes and one business/minor public water supply above safe drinking water standards.

The State of Oklahoma supports the inclusion of the Eagle Industries Site on the NPL and requests assistance in addressing the contamination. We look forward to working collaboratively with EPA to plan, select, and implement an appropriate and reasonable remedy for this site. To this end, I request that EPA grant DEQ "lead agency" status per 40 CFR 300.515.

Sincerely,

A handwritten signature in cursive script that reads "Mary Fallin".

Mary Fallin
Governor

cc: Honorable Michael Teague, Secretary of Energy & Environment
Scott Thompson, Executive Director, Oklahoma DEQ
Carl Edlund, Director, Superfund Division, EPA Region 6

To: Schnare, David[schnare.david@epa.gov]; Mederos, Carolina[carolina.mederos@squirepb.com]; Ken Simonson[simonsonk@agc.org]; Grevatt, Peter[Grevatt.Peter@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Roberson, Alan[aroberson@asdwa.org]; Julia Anastasio(janastasio@acwa-us.org)[janastasio@acwa-us.org]; Rick Farrell[rfarrell@madisonassoc.com]; EFeenstra@uswateralliance.org[EFeenstra@uswateralliance.org]; Ahmed Badruddin[ahmed@watrhub.com]; Aaron Fisher[afisher@werf.org]; Lunn, Michael[mlunn@grand-rapids.mi.us]; Karen Pallansch[Karen.Pallansch@alexrenew.com]; Cristina Ahmadpour[cristina.ahmadpour@isleutilities.com]
Cc: Anita Bermudez[anita@WWEMA.org]; Robert Pignato[Robert@WWEMA.org]; Lorna Huff[Lorna.Huff@alexrenew.com]; Christensen, Christina[Christensen.Christina@epa.gov]; Mason, Paula[Mason.Paula@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]
From: Vanessa Leiby
Sent: Wed 3/15/2017 8:03:29 PM
Subject: Speaker Presentations Needed for WWEMA Washington Forum

Good Afternoon WWEMA Washington Forum Speakers! We are looking forward to hearing from you all next week. If you are planning to use a PowerPoint presentation, could you please send the file to us by COB tomorrow (3/16/17) so that we can get it loaded on our computer. Also, please let me know if you are NOT using any electronic presentation materials so we won't keep bothering you. So far, I have the following:

Carolina Mederos: PowerPoint

Aaron Fisher: PowerPoint

Betsy Southerland: PowerPoint

Julia Anastasio: None

Thanks! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: 240-678-4623

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

To: Schnare, David[schnare.david@epa.gov]
From: Shapiro, Mike
Sent: Tue 3/14/2017 7:44:14 PM
Subject: Re: Waiver for non-us steel

Will do. Thanks for letting us know.

Mike

Michael Shapiro
Deputy Assistant Administrator
US EPA, Office of Water

> On Mar 14, 2017, at 3:23 PM, Schnare, David <schnare.david@epa.gov> wrote:
>
> Pruitt declined to allow the waiver. Get Jackson and Dravis information sufficient to show that you have
done your due diligence and there is no US source of the steel necessary for the 62 inch pipe.
>
> dschnare
>
> Sent from my iPhone

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Benton, Donald
Sent: Mon 3/6/2017 10:59:49 PM
Subject: FW: Support for RMP Petition
Support for RMP Petition 3-2-17.pdf

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Andy O'Hare [mailto:aohare@tfi.org]
Sent: Monday, March 6, 2017 11:57 AM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Cc: Benton, Donald <benton.donald@epa.gov>
Subject: Support for RMP Petition

Administrator Pruitt,

Attached please find a letter supporting a petition for reconsideration of the risk management program rule, which was promulgated by the agency on January 13, 2017 (82 Fed. Reg. 4594). The petition was prepared on behalf of a coalition of associations and sent to you under the signature of Justin Savage with Hogan Lovells on February 28, 2017.

The expression of support for the petition is being offered by The Fertilizer Institute and the Agricultural Retailers Association.

Please don't hesitate to reach out with any questions regarding our perspectives on this matter.

Regards,

Andy O'Hare

Andrew T. O'Hare, CAE

Vice President, Public Policy

The Fertilizer Institute

425 Third Street, SW

Suite 950

Washington, DC 20024

(202) 515-2704 (work)

(202) 270-0094 (cell)

aohare@tfi.org



The Fertilizer Institute

Nourish, Replenish, Grow



AGRICULTURAL
RETAILERS
ASSOCIATION

March 2, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt,

The Fertilizer Institute¹ (TFI) and the Agricultural Retailers Association² represent fertilizer manufacturers, transporters, wholesaler, brokers and retailers. We are writing in regards to a Clean Air Act petition for reconsideration filed on February 28, 2017, by a collection of associations under the signature of Justin Savage with Hogan Lovells.

The petition requests that the agency reconsider certain aspects of changes to the EPA risk management program (RMP), which were promulgated and published in the Federal Register on January 13, 2017 (82 Fed. Reg. 4594). Many TFI and ARA members operate facilities that are currently subject to the RMP. We have significant concerns with a number of the provisions included the recent program changes, most notably, the new obligations to share very sensitive, facility-specific site security information with local emergency planners and the general public. We agree with representatives from other federal agencies, such as the Department of Homeland Security, who believe that the new obligations are not wise or necessary.

Accordingly, we strongly support the petition for reconsideration filed this week by our association colleagues and recommend that the agency approve the petition and expeditiously move forward with addressing the specific rulemaking inadequacies cited therein.

We would be delighted to address further our support for this petition and our concerns with the recent changes to the RMP at your convenience. We may be reached at aohare@tfi.org ((202) 515-2704) or richard@aradc.org ((202) 457-0285). Thank you for your attention to this matter.

Sincerely,

Andrew T. O'Hare
Vice President, Public Policy
The Fertilizer Institute

Richard Gupton
Sr. Vice President, Public Policy and Counsel
Agricultural Retailers Association

¹ TFI represents the nation's fertilizer industry including producers, importers, retailers, wholesalers, and companies that provide services to the fertilizer industry. TFI's members provide nutrients that nourish the nation's crops, helping to ensure a stable and reliable food supply. TFI's full-time staff, based in Washington, D.C., serves its members through legislative, educational, technical, economic, information, and public communications programs.

² ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include: fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

From: Sharma, Prianka P.
Location: Advo Conference Room
Importance: High
Subject: Canceled: The Future of Environmental Law Under the Trump Administration (Webinar)
Categories: Record Saved - Shared
Start Date/Time: Mon 3/13/2017 9:30:00 PM
End Date/Time: Mon 3/13/2017 11:30:00 PM

;

Program Overview:

Dr. David Schnare, who was part of President-elect Trump's EPA Transition Landing Team, headlines a distinguished panel of experts to discuss the Trump Administration's environmental law agenda at an EBA Energizer on **March 13 from 5:30pm to 7:30pm** at Hogan Lovells US LLP in Washington, DC. Panelists will focus particularly on the impact of environmental laws on the energy sector. Rep. Dr. Schnare will be joined by Matt Kellogg, senior policy advisor and counsel to U.S. House Majority Leader Kevin McCarthy, and Richard Alonso, a partner with Bracewell LLP. Justin Savage, a partner with Hogan Lovells will moderate the event. This program is presented by the EBA's Environmental Regulation Committee.

Thanks to our Sponsor:

Hosted By: *Hogan Lovells US LLP*

Moderator:

Justin Savage, Partner, *Hogan Lovells US LLP*

Panelists:

Richard Alonso, Partner, *Bracewell LLP*

Matthew Kellogg, Senior Policy Advisor & Counsel, House Majority Leader Kevin McCarthy, *U.S. House of Representatives*

Dr. David Schnare, Esq., Ph.D, *Environmental Protection Agency (EPA) Transition Team and Landing Team*

To: Schnare, David[schnare.david@epa.gov]
From: Sarvadi, David G.
Sent: Tue 3/7/2017 6:30:49 PM
Subject: I'm not making any progress with the TSCA new chemicals branch
removed.txt

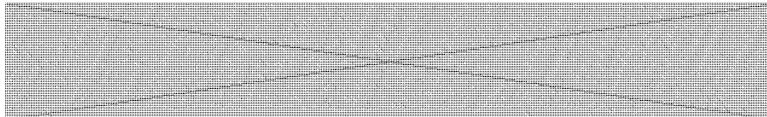
Can we get a half hour on Tuesday or Wednesday next week to explain our issues? We're on a critical path where lack of resolution before the end of the month means forcing the business offshore.

Cordially,
DGS

David G. Sarvadi
Attorney-at-Law

Personal Phone/Ex. 6 fax 202-434-4646 | **Personal Email/Ex. 6**
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that will cover OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at



Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

To: Schnare, David[schnare.david@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]
From: Richardson, RobinH
Sent: Thur 3/9/2017 10:14:09 PM
Subject: FW: for review EPA draft comments: LRM [RD-115-11] OMB Request for Views on HR732 Stop Settlement Slush Funds Act of 2017

Hi David – Thank you for stopping by earlier. Here are the comments provided by OECA (reviewed by Larry). We received an extension from OMB until cob tomorrow. One thought we had was to provide the General Comments, with a qualifier that we have more detailed comments if they were interested. Let me know your thoughts and we'll go from there. Also be on the lookout for one more LRM on the SAB Act of 2017. Thanks again, Robin

Robin H Richardson

Principal Deputy Associate Administrator

Office of Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-3358 (desk)

703-581-5814 (cell)

richardson.robinh@epa.gov

U.S. EPA Comments on

HR 732: “Stop Settlement Slush Funds Act of 2017” (Rep. Goodlatte)

3.7.17

Background: H.R. 732, the “Stop Settlements Slush Fund Act” seeks to prohibit officials of the government from entering into or enforcing any settlement agreement (defined as resolving a civil action, criminal plea agreement, a deferred prosecution or

non-prosecution agreement) directing or providing a payment to any person or entity other than the United States. There are two exceptions to this prohibition, if the payment provides restitution for or otherwise directly remedies actual harm (including to the environment) directly and proximately caused by the defendant; or constitutes payment for services rendered in connection with the case.

General Comments

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Impacts:

HR 732 Key Points and Impacts on Civil Settlements

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

HR 732 Key Points and Impacts on CERCLA Civil Settlements

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

H.R. 732 Key Points and Impacts on Criminal Agreements and Community Service Payments

Deliberative Process Privilege/Ex. 5

Background on Criminal Agreements and Community Service Payments in Environmental Prosecutions Per Current DOJ Policy:

Deliberative Process Privilege/Ex. 5

Recent Criminal Agreements Including Payments to Congressionally-Chartered Foundations and State Agencies

-

Deliberative Process Privilege/Ex. 5

- ☐☐☐☐☐☐☐ Payments to Congressionally-Chartered Environmental Foundations

Deliberative Process Privilege/Ex. 5

- ☐☐☐☐☐☐☐ Payments to State Environmental Agencies

Deliberative Process Privilege/Ex. 5

- ☐☐☐☐☐☐☐ Payments to Both Congressionally-Chartered Foundations and State Agencies

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Examples of Recent Criminal Prosecutions Resulting in Community Service

Deliberative Process Privilege/Ex. 5

1. **Deepwater Horizon Disaster -- BP, PLC, (E.D. La)**

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

2. Deepwater Horizon Disaster -- Transocean, LTD, (E.D. La.)

Deliberative Process Privilege/Ex. 5

3. Tonawanda Coke Corporation (W.D.N.Y.)

Deliberative Process Privilege/Ex. 5

4. Wal-Mart (C.D. Ca.) and (W.D. Mo.)

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

5. Duke Energy (E.D. NC)

Deliberative Process Privilege/Ex. 5

-

Carolyn Levine

Office of Congressional and

Intergovernmental Relations

U.S. EPA

(202) 564-1859

levine.carolyn@epa.gov

From: Janifer, Pamela
Sent: Wednesday, March 08, 2017 12:14 PM
To: Richardson, RobinH <Richardson.RobinH@epa.gov>
Cc: Levine, Carolyn <Levine.Carolyn@epa.gov>
Subject: LRM [RD-115-11] OMB Request for Views on HR732 Stop Settlement Slush Funds Act of 2017

Robin,

Please review attached comments on the OMB request for views on HR 732, Stop Settlement Slush Funds Act of 2017. Comments were only received from OECA. OMB deadline is 4:00pm today.



Pamela Janifer

U.S. Environmental Protection Agency

Office of Congressional Affairs

1200 Pennsylvania Avenue, N.W.

Washington, D.C. 20460

202.564.6969

Janifer.pamela@epa.gov

Subject: LRM [RD-115-11] OMB Request for Views on HR732 Stop Settlement Slush Funds Act of 2017

DEADLINE: 4:00PM Wednesday, March 08, 2017

Attached for your review, please find the text of H.R. 732, the Stop Settlement Slush Funds Act of 2017. H.R. 732 was ordered reported by the House Judiciary Committee on February 7th. The bill would, among other things, prohibit the Federal government from entering into certain settlement agreements that would direct, or provide for, a payment to any person or entity other than the United States.

Note that the text of HR 732 is very similar to that of HR 5063 of the 114th Congress.

Please review the text of HR 732 and provide your agency's views by the deadline above. Thank you.

LRM ID: RD-115-11
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

LEGISLATIVE REFERRAL MEMORANDUM
Wednesday, March 01, 2017

TO: Legislative Liaison Officer - See Distribution

FROM: Ventura, Alexandra (for) Assistant Director for Legislative Reference
SUBJECT: LRM [RD-115-11] OMB Request for Views on HR732 Stop Settlement Slush Funds Act of 2017

OMB CONTACT: **Rody Damis**

E-Mail: **EOP/Ex. 6**
PHONE

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. By the deadline above, please reply by e-mail or telephone, using the OMB Contact information above.

Please advise us if this item will affect direct spending or receipts for the purposes of the Statutory Pay-as-You-Go Act of 2010.

Thank you.

[1] Consider an illegal dumping of pollutants to a river that runs through multiple communities: Biologists might attempt to collect and classify dead fish and other aquatic organisms, but they will almost certainly fail to find every one; and without undertaking a tremendously expensive and time-consuming study, they have no reliable way to quantify the sub-lethal effects of pollution on surviving organisms. Riverside communities would also suffer harms that are difficult to quantify without significant effort and expense: commercial businesses may be adversely impacted; recreational users may be temporarily denied access for boating or fishing, and left with ongoing concerns regarding water quality; the community as a whole suffers from the fact that a public resource is not available for hiking, biking, watersports, and recreational or commercial fishing.

To: Schnare, David[schnare.david@epa.gov]
From: Mortimer, Megan
Sent: Tue 3/14/2017 7:43:24 PM
Subject: Meeting Request RE NESHAP for Felman

>> Good Afternoon Mr. Schnare,

>>

>> I am writing to request a meeting with you on behalf of our client Felman Production to discuss the NESHAP final rule regarding the production of ferroalloys. We know that you have had conversations with representatives from Eramet Marietta on this issue and they thought it would be beneficial for us to reach out to you as well.

>>

>> It turns out that the General Counsel for Felman, Robert Powell, will be in DC this Thursday March 16. Do you have any time on that day for a meeting with Mr. Powell?

>>

>> Thanks so much!

>> Megan Mortimer

>>

>> Megan Mortimer, Cozen O'Connor Public Strategies

>> 202-463-2536

>>

>> Sent from my iPad

Notice: This communication, including attachments, may contain information that is confidential and protected by the attorney/client or other privileges. It constitutes non-public information intended to be conveyed only to the designated recipient(s). If the reader or recipient of this communication is not the intended recipient, an employee or agent of the intended recipient who is responsible for delivering it to the intended recipient, or you believe that you have received this communication in error, please notify the sender immediately by return e-mail and promptly delete this e-mail, including attachments without reading or saving them in any manner. The unauthorized use, dissemination, distribution, or reproduction of this e-mail, including attachments, is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) is not a waiver of any attorney/client or other privilege.

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Packard, Elise[Packard.Elise@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
From: Shapiro, Mike
Sent: Mon 3/6/2017 10:39:07 PM
Subject: Re: WOTUS

It's scheduled for Wed at 11 under the unassuming title of Wetlands General.

David Snare has accepted the invite.

Mike

Michael Shapiro
Deputy Assistant Administrator
US EPA, Office of Water

On Mar 6, 2017, at 3:29 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

David- I'm looping in Mike and Steve as they are more likely to know when we planned to check in ahead of the briefing for the Administrator. I know I got an update last Thursday as part of my standing weekly with the Water Law Office. If folks were planning to use those channels to brief up we can also set up a time were a small group could meet with you this week. I'm traveling through Wednesday, so ask that it be set for Thursday or Friday.

Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Mar 6, 2017, at 2:23 PM, Schnare, David <schnare.david@epa.gov> wrote:

Is there a huddle planned on this, say on Wednesday?

d.

To: Schnare, David[schnare.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Jackson, Ryan
Sent: Thur 3/9/2017 12:39:07 PM

Don't worry about a sit down at 8.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

To: Schnare, David[schnare.david@epa.gov]
From: Kaplan, Robert
Sent: Mon 3/13/2017 8:15:51 PM
Subject: RE: Delegation of authority

David,

I have a referral to DOJ in front of me now that arguably fits the criteria below.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Is there a clearance process? I know that OECA has been going through Justin – not sure how your delegation email works with the “Justin” review process.

Any thoughts on how to proceed?

- Bob

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago



Personal Phone/Ex. 6

Direct: 312-886-1499

Main: 312- 886-3000

From: Schnare, David
Sent: Thursday, March 02, 2017 8:14 AM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>

Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>

Subject: Delegation of authority

Because the Presidentially-appointed Assistant Administrators and Regional Administrators have yet to assume their duties, for the next 30 days, the Administrator wishes to retain approval authority for Agency actions having significant regulatory and enforcement effect. The Administrator will rely on the Acting RA's and AA's to identify and send upward any proposed decisions or final agency actions for the Administrator's review which, in the judgement of the Acting RA's and AA's would limit the flexibility of the States, limit energy resource use, impose significant costs on industry or commerce, or otherwise likely result in significant public attention on the proposed decisions or final agency actions.

To: Schnare, David[schnare.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]
From: Rees, Sarah
Sent: Thur 3/9/2017 10:07:25 PM
Subject: RE: Cafe

Thanks - I was getting conflicting information - this is super helpful.

Cheers,
Sarah

-----Original Message-----

From: Schnare, David
Sent: Thursday, March 09, 2017 4:40 PM
To: Brown, Byron <brown.byron@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Subject: RE: Cafe

The signed FR Notice is at DOT awaiting the Secretary's signature, something I'm told will happen probably on Monday. DOT has taken responsibility to get it to OFR once the White House tells them (us) to have it published. They will let us know when they've sent it over.

I've asked for a copy of the final signed document for our files.

Sarah will probably see the notice listed at OFR before I hear back from DOT, but if not, when I hear, I'll let everybody know it has gone.

In any case, no one knows when the WH will tell us to let it go.

d.

-----Original Message-----

From: Brown, Byron
Sent: Thursday, March 9, 2017 4:35 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Subject: Cafe

David - can you loop in Sarah Rees on timing of cafe notice going to FR? Thanks.

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: Kling, David
Sent: Wed 3/15/2017 7:20:11 PM
Subject: RE: Resignation

Thanks for your service over the past several months, David, and all best in the days ahead.

David J. Kling, Associate Administrator for Homeland Security

U.S. Environmental Protection Agency (1109A)

Room 6426 William Jefferson Clinton Building North

1200 Pennsylvania Ave., N.W., Washington, DC 20460

202 564-6978, Desk 202 564-0317, Fax 202 501-0026

From: Schnare, David
Sent: Wednesday, March 15, 2017 2:41 PM
To: 2017CareerTransitionLeaders <2017CareerTransitionLeaders@epa.gov>;
2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants
<2017Regionfirstassistants@epa.gov>
Cc: Willis, Sharnett <Willis.Sharnett@epa.gov>; Brazauskas, Joseph
<Joseph.Brazauskas@mail.house.gov>; john.k.mashburn (EOP/Ex. 6); Catanzaro, Michael J.
(EOP/Ex. 6); Bremberg, Andrew P. EOP/WHO
(EOP/Ex. 6); Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Resignation

Dear colleagues:

Transitions begin and they end. I have been honored to have had the opportunity to serve the Trump Administration, but I have completed as much as I am able. Thus it is time for me to move on.

I will resign effective COB Friday and will be on leave until then.

My contact information for any who wish to remain in touch:

Personal Phone/Ex. 6

Personal Email/Ex. 6

Personal Phone/Ex. 6

I wish each of you the best.

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]
From: Zack Colman
Sent: Tue 3/14/2017 7:40:10 PM
Subject: Re: Endangerment finding

OK.

On Tue, Mar 14, 2017 at 3:39 PM, Schnare, David <schnare.david@epa.gov> wrote:

Not interested

Sent from my iPhone

On Mar 14, 2017, at 3:37 PM, Zack Colman <colmanz@csmonitor.com> wrote:

Hi David,

I know we tried on this a couple weeks ago and, admittedly, it came a bit out of the blue. I was wondering if you had time over the next couple weeks to meet so I could introduce myself. As you can guess by the job title, I cover the energy and environment space exclusively (what's misleading about the title is I'm 95 percent reporter, 5 percent editor — what newspapers can't pay in money they try to make up for in fancy titles).

Anyway, let me know if you've got some free time coming up. Would be great to get something on the calendar.

-Zack

On Wed, Feb 22, 2017 at 9:18 PM, Zack Colman <colmanz@csmonitor.com> wrote:

Understood. Thought I might as well try!

On Wed, Feb 22, 2017 at 6:49 PM, Schnare, David <schnare.david@epa.gov> wrote:

Not something I can do.

From: Zack Colman [mailto:colmanz@csmonitor.com]
Sent: Wednesday, February 22, 2017 5:19 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: Endangerment finding

Hi David,

Zack Colman here, deputy energy & enviro editor with CSMonitor. Hope this email finds you well. Wanted to know if you had time to chat about the endangerment finding. Had a couple questions about procedure.

Spoke to Sen. Inhofe who mentioned the idea of opening up the science and including different findings. Not sure how that would impact the endangerment finding — whether that would mean a less aggressive GHG policy was needed, or whether it is just the beginning of an avenue to submit new literature that would then need to go through the regulatory process.

Anyway, that's not the only question I have with respect to the endangerment finding. Maybe it's not one that you can help on, but perhaps there's others. Can email me here, though a phone call might be most efficient — can get me at [248.563.9744](tel:248.563.9744).

Thanks,

-Zack

--

Zack Colman

Deputy Energy/Enviro Editor

Christian Science Monitor

Knight Science Journalism fellow at MIT, '15-16

[248.563.9744](tel:248.563.9744)

Twitter: @zcolman

--

Zack Colman

Deputy Energy/Enviro Editor
Christian Science Monitor
Knight Science Journalism fellow at MIT, '15-16
248.563.9744
Twitter: @zcolman

--

Zack Colman

Deputy Energy/Enviro Editor
Christian Science Monitor
Knight Science Journalism fellow at MIT, '15-16
248.563.9744
Twitter: @zcolman

--

Zack Colman

Deputy Energy/Enviro Editor
Christian Science Monitor
Knight Science Journalism fellow at MIT, '15-16
248.563.9744
Twitter: @zcolman

To: Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Mccabe, Catherine
Sent: Thur 3/2/2017 1:37:45 AM
Subject: Message to staff re budget

Hi Ryan and David - as discussed on Tuesday meeting/call with Acting AA's and RA's, we think it would be very helpful if the Administrator would send out a calming message to staff, or give us suggested talking points, to help address the widespread anxiety that has been created by the press stories on the budget. Many Acting AA's and RA's have already sent out messages to address the budget concerns and explained that this is just the beginning of a long process. I have been holding off in the hopes that the Administrator would give us some guidance on messaging, particularly with respect to his efforts to represent the Agency. Do you think that is likely to be forthcoming this week? If not, I will plan to move ahead to talk and/or send a message to staff in the next few days. Thanks for any insight you can provide.

Sent from my iPhone

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Hull, George[Hull.George@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]
From: Gaines, Cynthia
Sent: Mon 3/6/2017 10:20:53 PM
Subject: Daily Reading File: March 6, 2017
[Daily Reading File.3.6.17.pdf](#)



Correspondence Management System

Control Number: AX-17-000-5558

Printing Date: March 06, 2017 01:34:46



Citizen Information

Citizen/Originator: Rushenberg, Timothy J.

Organization: Indiana Energy Association

Address: 1600 One American Square, Box 82065, Indianapolis, IN 46282

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5558

Alternate Number: 7785 4916 1933

Status: Pending

Closed Date: N/A

Due Date: Mar 20, 2017

of Extensions: 0

Letter Date: Mar 1, 2017

Received Date: Mar 3, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: DRF - EPA Docket No. EPA-HQ-OAR-2015-0500; Cross -State Air Pollution Rule Update for the 2008 Ozone NAAQS

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: Please prepare an acknowledgement letter (jl)

CC: Kristien Knapp - AO-IO
OPA - Office of Public Affairs
R5 - Region 5 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OAR	Mar 3, 2017	Mar 20, 2017	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					
Barbara Matthews	OAR	OAR-OAP	Mar 6, 2017	Mar 16, 2017	N/A
Instruction: DX - DIRECT REPLY - - PREPARE RESPONSE FOR THE SIGNATURE OF THE DIVISION DIRECTOR.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

Indiana ENERGY Association

1600 ONE AMERICAN SQUARE, BOX 82065 INDIANAPOLIS, INDIANA 46282 317-632-4406 FAX 317-262-4940 www.indianaenergy.org

2017 MAR -3 PM 2:27

OFFICE OF THE
EXECUTIVE SECRETARIAT

March 1, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

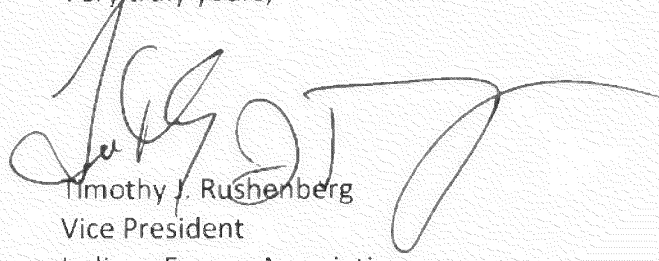
Re: EPA Docket No. EPA-HQ-OAR-2015-0500; Cross-State Air Pollution Rule
Update for the 2008 Ozone NAAQS.

Dear Administrator Pruitt:

Please find enclosed the Petition for Administrative Review of the October 26, 2016 final rule: "Cross-State Air Pollution Rule Update for the 2008 NAAQS," EPA-HQ-OAR-2015-0050; FRL-9950-30-OAR; RIN 2060-AS05. This Petition for Administrative Review is being filed by the Indiana Utility Group and the Indiana Energy Association. Currently the members of the Indiana Utility Group include Hoosier Energy, Indiana Municipal Power Agency, Ohio Valley Electric Corporation and Wabash Valley Power. The members of the Indiana Energy Association are set forth on this letterhead.

We greatly appreciate your consideration of this petition.

Very truly yours,


Timothy J. Rushenber
Vice President
Indiana Energy Association
On behalf of Indiana Utility Group

Enclosure

THE VOICE FOR INDIANA ENERGY

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

**Indiana Utility Group and Indiana
Energy Association, Petitioner**

**EPA Docket #: EPA-HQ-
OAR-2015-0500**

PETITION FOR RECONSIDERATION

I. Introduction

Pursuant to Clean Air Act Section 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B), the Indiana Utility Group and the Indiana Energy Association (IUG/IEA)¹ respectfully submit this Petition for Reconsideration to request that the United States Environmental Protection Agency (“EPA”) reconsider and correct certain deficiencies in the final rule entitled *Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS*, 81 Fed. Reg. 74504 (Oct. 26, 2016) (“Final Rule”) (EPA-HQ-OAR-2015-0500). IUG/IEA believe that the ozone season NO_x budget for the State of Indiana is insufficient as a result of those deficiencies, which places an undue burden on Indiana utilities.

The IUG/IEA have separately filed a petition for review of the Final Rule with the United States Court of Appeals, District of Columbia Circuit.² Regardless of the outcome of that petition, EPA’s reconsideration of the Final Rule with respect to the calculation of the Indiana ozone season NO_x budget may provide fair and equitable relief within the framework of the Final Rule, and IUG/IEA urge EPA to take prompt action on this petition given the fact that the budget is set to take effect on May 1, 2017.

II. Concerns to Be Addressed in Reconsideration

EPA proposed to update the Cross State Air Pollution Rule (CSAPR) to address interstate transport of ozone pollution with respect to the 2008 ozone national ambient air quality standard (NAAQS) on December 3, 2015. *See* 80 Fed. Reg. 75706 (Proposed Rule). At the proposal stage, EPA identified that it would undertake additional analysis and conduct additional modeling to support its final rulemaking. *See* 80 Fed. Reg. at 75722. Several IUG/IEA member utility companies provided comments on the Proposed Rule, pointing out problems with assumptions and incorrect information used in the IPM modeling runs that were the basis for the Proposed

¹ The combined membership of the IUG/IEA include: Hoosier Energy, Indiana Municipal Power Agency, Ohio Valley Electric Corporation, Wabash Valley Power, Boonville Natural Gas Corp., Citizens Energy Group, Community Natural Gas Co., Inc., Duke Energy, Fountaintown Gas Co., Inc., Indiana Michigan Power, Indiana Natural Gas Corp., Indianapolis Power & Light Company, Midwest Natural Gas Corp., Northern Indiana Public Service Co., Ohio Valley Gas Corp., South Eastern Indiana Natural Gas Co., Inc., Sycamore Gas Co., Vectren Energy Delivery of Indiana, Inc.

² Case No. 1437 filed on December 22, 2016.

Rule. The comments also expressed the concern that because of the many issues that needed to be addressed, EPA should take the step to publish its additional analyses for public review and comment before issuing a final rule. EPA chose not to publish additional analyses and instead proceeded to final rulemaking, incorporating significant changes to data, assumptions, and procedures that resulted in significant changes to state-by-state budgets in the Final Rule relative to the Proposed Rule.

The State of Indiana was particularly impacted by the changes reflected in the Final Rule. The Proposed Rule included an ozone season budget for Indiana of 28,284 tons, which by itself was a very significant reduction from the original CSAPR Phase 2 state budget of 46,175 tons. Although EPA's revised assessment of the "widely achievable" SCR emissions rate (from 0.075 lb/MMBtu to 0.10 lb/MMBtu) would have been expected to result in an increase in the Indiana budget, the Final Rule actually further reduced the Indiana budget by approximately 18% from the proposal to only 23,303 tons.

Making sense of the budget calculations and results in the Final Rule has been extremely difficult because EPA has not provided parsed files that provide a clear unit-by-unit description of the data. Duke Energy, a member of IUG/IEA, hired James Marchetti, of James Marchetti, Inc., a nationally recognized expert on the application of CSAPR and other interstate ozone transport rulemakings to the power industry, to provide an analysis of the available information in EPA's docket. Coupling Mr. Marchetti's analysis with IUG/IEA's review of EPA's Final Rule and the supporting information posted on EPA's rulemaking web site³, IUG/IEA has identified several errors related to the manner in which the Indiana budget was derived in the Final Rule.

Specifically, IUG/IEA request that EPA reconsider certain technical aspects of the rulemaking that impact the Indiana budget. Those include:

- EPA's change to a "relative reduction" methodology adopted in the final rule for calculating the budget that had not been included in the proposed rule;
- EPA's inappropriate adjustments to the "2015 Historic Emissions Rate" for Indiana which result in artificially lowering the starting point for EPA's budget calculation;
- EPA's inconsistent and inappropriate application of the "widely achievable" emissions rate for operation of SCR on existing units; and
- EPA's use of 2015 heat input for Indiana units rather than 2014 as proposed or a multi-year value.

A. Relative Reduction Methodology for Calculating Budgets

In the Final Rule, EPA adopted a "relative reduction" methodology for calculating state budgets⁴, which is based on the difference between an "adjusted" actual emissions rate in 2015 and a modeled reduction in emissions rates between the IPM 2018 Base Case and 2018 \$1400 per ton Control Case. That resulting emissions rate is then multiplied by the 2015 actual heat input for the state. This methodology is significantly different than the methodology that EPA had used to develop the budgets in the Proposed Rule, and IUG/IEA and its members had no

³ <https://www.epa.gov/airmarkets/final-cross-state-air-pollution-rule-update> and related linked addresses.

⁴ 81 Fed. Reg. 74548.



Correspondence Management System

Control Number: AX-17-000-5588

Printing Date: March 06, 2017 02:41:14



Citizen Information

Citizen/Originator: Smith, Timothy

Organization: Walden Asset Management

Address: One Beacon Street, 33rd Floor, Boston, MA 02108

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5588

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Mar 21, 2017

of Extensions: 0

Letter Date: Mar 3, 2017

Received Date: Mar 3, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: EML (E-Mail)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: DRF - 2022-2025 Model Year Light-Duty Vehicle Greenhouse Gas Emission and Corporate Average Fuel Economy Standards; EPA-HQ-OAR-2015-0827

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: Please prepare an acknowledgement letter (jl)

CC: Kristien Knapp - AO-IO
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OAR	Mar 6, 2017	Mar 21, 2017	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
-----------	--------	--------	------



Walden Asset Management

Advancing sustainable business practices since 1975

March 3, 2017

Administrator Scott Pruitt
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re. 2022-2025 Model Year Light-Duty Vehicle Greenhouse Gas Emission and
Corporate Average Fuel Economy Standards; EPA-HQ-OAR-2015-0827

Dear Administrator Pruitt,

We would like to draw your attention to the attached letter from 40 investors with over \$740 billion in assets under management, which expresses strong support for EPA's Proposed Determination to retain the current standards. Investors support the standards because they will strengthen the U.S. economy, provide the regulatory certainty needed to spur innovation, reduce both our dependence on oil and climate risk, save businesses and consumers money, and create jobs. Thank you for your careful consideration of this critical issue.

Sincerely,

Timothy Smith
Director of ESG Shareowner Engagement
Walden Asset Management
One Beacon Street
Boston, MA 02108

cc:

President Donald J. Trump
The White House
1600 Pennsylvania Ave.
Washington, D.C. 20500

Bill Charmley
U.S. Environmental Protection Agency
Fuel Emissions Laboratory/OAR
2565 Plymouth Road
Ann Arbor, MI 48105

Christopher Grundler
U.S. Environmental Protection Agency
1200 Pennsylvania, N.W.
Mail Code 6401A
Washington, D.C. 20460

Michael Olechiw
U.S. Environmental Protection Agency
Fuel Emissions Laboratory/OAR
2565 Plymouth Road
Ann Arbor, MI 48105

Secretary Elaine Chao
U.S. Department of Transportation
1200 New Jersey Ave, S.E.
Washington, DC 20590

Rebecca Yoon
Office of Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

James Tamm
Department of Transportation
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Mike McCarthy
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

Annette Herbert
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

January 6, 2016 (*update to December 30 letter*)

Administrator Gina McCarthy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Secretary Anthony Foxx
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re. Proposed Determination Regarding 2022-2025 Model Year Light-Duty Vehicle
Greenhouse Gas Emission Standards; EPA-HQ-OAR-2015-0827

Dear Administrator McCarthy,

As long-term investors with over \$740 billion in assets under management, we are writing to voice our strong support for EPA's Proposed Determination that the current standards for model years 2022-2025 (MY 2022-2025) Greenhouse Gas (GHG) Emissions standards remain appropriate.

The standards represent a critical opportunity to strengthen the U.S. economy and create jobs – both by benefiting the auto industry and by ensuring fuel cost savings, which in turn will increase spending on non-energy goods and services. In addition, given the critical role of strong standards in driving innovation, the standards will also help ensure the global competitiveness of the industry.

An economic analysis¹ commissioned by Ceres and produced by independent automotive industry analysts found that the current National Program would reduce risk for the Detroit Three and benefit suppliers. First, the study shows that the Detroit Three will remain profitable under the current standards under all fuel price scenarios considered - even under a very low \$1.80 per gallon fuel price. Second, the current standards provide insurance for the Detroit Three automakers and their suppliers against future market losses in the event of a fuel price spike. Third, regulatory certainty is valuable to automakers, and especially the Tier One suppliers, who are making the majority of fuel-saving technology investments in research, development and production capacity; the standards will allow them to realize returns on their investments and avoid stranded costs. Fourth, the analysis found that the standards provide significant benefits to suppliers, which make up a significantly larger portion of the economy than the automakers, and employ over half a million Americans - over two and a half times more people than the automakers. Specifically, the study found that Tier One auto suppliers stand to gain

¹ http://www.ceres.org/files/analyst-brief-economic-effects-on-us-automakers-and-suppliers/at_download/file

about \$90 billion in increased orders for fuel-saving technology under the current standards (in the 2014-2025 time frame). Fifth, weakening the standards could make the U.S. an outlier among global regulatory regimes, and put the Detroit Three at a disadvantage because it would undermine their ability to achieve economies of scale through increased use of global platforms.

Finally, strong standards will serve to mitigate the economic risks associated with our continuing dependence on oil as well as climate change. In light of the volatility of fuel prices, strong standards are needed in order to reduce transportation costs for businesses and consumers. In addition, climate change presents significant long-term risks to the global economy, and to investors across all asset classes. Strong standards will serve to mitigate that risk by providing significant GHG reductions; the MY 2022-2025 standards would save approximately 537 million metric tons of GHG emissions, and reduce oil use by 1.2 billion barrels.²

In sum, the standards will strengthen the U.S. economy, provide the regulatory certainty needed to spur innovation, reduce both our dependence on oil and climate risk, save businesses and consumers money, and create jobs. Accordingly, we urge that EPA issue a Final Determination preserving the MY 2022-2025 standards.

Sincerely,

California State Teachers' Retirement System
Office of the New York State Comptroller
New York City Office of the Comptroller
Office of the Connecticut State Treasurer
ACTIAM
Breckinridge Capitol Advisors
Trinity Health
Presbyterian Church U.S.A.
Dignity Health
Trilogy Global Advisors LP
Dana Investment Advisors
Miller/Howard Investments, Inc.
NEI Investments
Pax World Management LLC
Walden Asset Management
Everence and the Praxis Mutual Funds
Trillium Asset Management
Domini Impact Investments LLC
Reynders, McVeigh Capital Management, LLC
Mercy Investment Services
Seventh Generation Interfaith Inc

² Proposed Determination at 11

<https://nepis.epa.gov/Exe/ZyPDF.cgi/P100OXEO.PDF?Dockey=P100OXEO.PDF>

Sustainability & Impact Investing Group, Rockefeller Asset Management
First Affirmative Financial Network
Zevin Asset Management
The George Gund Foundation
Unitarian Universalist Association
Sonnen Capital LLC
Green Century Capital Management
Friends Fiduciary Corporation
MissionPoint Partners
Arjuna Capital
Mennonite Education Agency
Tri-State Coalition for Responsible Investment
Sierra Club Foundation
Sisters of St. Dominic of Caldwell NJ
Christopher Reynolds Foundation
BVM Shareholder Education & Advocacy Group
ICCR (Interfaith Center on Corporate Responsibility)
Sisters of Saint Joseph of Chestnut Hill, Philadelphia, PA
Sisters of St. Francis of Philadelphia



Correspondence Management System

Control Number: AX-17-000-5589

Printing Date: March 06, 2017 02:42:52



Citizen Information

Citizen/Originator: Kelly, Anne L.

Organization: Business for Innovative Climate & Energy Policy

Address: 99 Chauncy Street 6th Floor, Boston, MA 02111

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5589

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Mar 20, 2017

of Extensions: 0

Letter Date: Mar 3, 2017

Received Date: Mar 3, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: EML (E-Mail)

Priority Code: Normal

Signature: AA-OAR-Assistant Administrator
- OAR

Signature Date: N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - 2022-2025 Model Year Light-Duty Vehicle Greenhouse Gas Emission and Corporate Average Fuel Economy Standards; EPA-HQ-OAR-2015-0827

Instructions: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR

Instruction Note: N/A

General Notes: N/A

CC: Kristien Knapp - AO-IO
OGC - Office of General Counsel -- Immediate Office
OP - Office of Policy
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
StephanieN Brown	OEX	OAR	Mar 6, 2017	Mar 20, 2017	N/A
Instruction: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History



BUSINESS for INNOVATIVE
CLIMATE & ENERGY POLICY
a project of Ceres

BICEP Members:

March 3, 2017

Annie's Inc
Aspen Skiing
Company
Aveda
Autodesk
Avon Products
Ben & Jerry's
Burton Snowboards
CA Technologies
Clif Bar
Dignity Health
eBay Inc.
Eileen Fisher
Fetzer Vineyards
Gap Inc.
General Mills
IKEA
JLL
KB Home
The Kellogg
Company
Levi Strauss & Co.
L Brands
L'Oreal
Mars Incorporated
Nestle
New Belgium
Brewing
Nike
The North Face
Outdoor Industry
Association
Owens Corning
Patagonia
Portland Trail
Blazers
Seventh Generation
Starbucks
Stonyfield Farm
Symantec
Timberland
Unilever
VF Corporation
Vulcan, Inc.

Administrator Scott Pruitt
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re. 2022-2025 Model Year Light-Duty Vehicle Greenhouse Gas Emission and
Corporate Average Fuel Economy Standards; EPA-HQ-OAR-2015-0827

Dear Administrator Pruitt,

As major U.S. businesses representing over \$400 billion in annual revenue, we are writing to voice our strong support for respecting EPA's Final Determination that the standards currently in place for MY2022-2025 are appropriate. We urge you to reject calls to withdraw the Final Determination, which is based on an updated analysis that draws on a comprehensive and robust technical record, and confirms the Technical Assessment Report's (TAR) findings that meeting the current standards for model years 2022-2025 will be feasible and cost-effective, and that automakers are adopting fuel savings technologies at faster rates than anticipated. (Indeed, actual costs are lower than projected in the 2012 rule, and EPA determined that stronger standards would actually be feasible and cost effective). The Final Determination also establishes that the 2025 standards can be met with very low levels of strong hybridization and full electrification, all while preserving consumer choice and ensuring fuel cost savings in all sizes of vehicles. In addition, independent studies establish that the standards will benefit the auto industry, and drive job and economic growth. Independent analyses also find that the standards will create jobs and economic growth, and rebut opponents' claims that the standards will result in prohibitive vehicle prices.

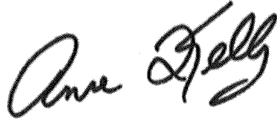
Given its size and connections to so many other sectors, the health of the auto industry has a significant impact on the broader economy. The current National Program represents a critical opportunity to strengthen our economy and create jobs – both by benefiting the auto industry and by ensuring fuel cost savings, which in turn will increase spending on non-energy goods and services. In addition, given the important role of strong standards in driving innovation, the standards will also help ensure the global competitiveness of the industry. Finally, given that transportation is now the largest source of GHG emissions in the U.S., strong clean car standards are imperative, both to meet our climate goals as well as our climate commitments under the Paris Agreement.

An [economic analysis](#) commissioned by Ceres and produced by independent automotive industry analysts Alan Baum and Dan Luria finds that the current National Program will reduce risk for the Detroit Three and benefit suppliers. First, the study shows that the Detroit Three will remain profitable under the current standards even at a very low \$1.80 per gallon fuel price. Second, current standards provide insurance for the Detroit Three automakers and their suppliers against future market share losses in the event of a fuel price spike. Third, regulatory certainty is valuable to automakers, and especially to the Tier One suppliers that are making the majority of fuel-saving technology investments in research, development and production capacity by ensuring returns on their investments. Fourth, the analysis found that the standards provide significant benefits to suppliers, which stand to gain about \$90 billion in increased orders under the standards. Notably, Tier One auto suppliers make up a significantly larger portion of the economy than the automakers, and employ over half a million Americans —more than two and a half times as many people as the automakers employ. Finally, weakening the standards could make the U.S. the outlier among global regulatory regimes, and put the Detroit Three at a disadvantage by undermining their ability to achieve economies of scale through increased use of global platforms. Another study, [More Jobs per Gallon](#), commissioned by Ceres and authored by Management Information Services, found that the standards would create approximately 484,000 new jobs economy-wide, and that national gross economic output would be approximately \$21.3 billion higher under the current standards. These study findings underscore the economic importance of the current standards to both automakers and suppliers, as well as to the broader economy.

Careful examination of the arguments made by those seeking to weaken the standards reveals flawed arguments and unsupported assumptions. For example, Ceres commissioned Baum and Luria to assess the argument that standards are making new vehicles unaffordable for the average consumer; Baum and Luria found that the standards play a minor role in price increases. In fact, their [analysis](#) shows that the increased price of an average new car or truck is due to changes in consumer income distribution and preferences, as well as to automakers' own business strategies. Many expensive and profitable features have gone from optional to nearly universal on car companies' entire model line-up. Automakers are adding these additional luxury features in order to target the average new car buyer, whose income is 175% that of the median U.S. household, and who wants and is able to pay for those features. Providing higher-priced vehicles with higher trim levels has contributed to record profits for automakers, and the increasing sales of more profitable and larger crossover vehicles has been the major driver of the increase in new vehicles' prices, rather than costs associated with fuel economy regulations. Similarly, Baum and Luria [analyzed](#) an [industry study](#) claiming sales and job losses under the standards, and concluded that it was flawed and based on unfounded assumptions – for example, the industry study's outdated cost estimates are based on a 1991 study and incorrectly assumes that automakers will pass on all their costs to consumers. In contrast, the Final Determination is based on rigorous updated analyses and the draft TAR, which was issued jointly by the National Highway Safety Administration (NHTSA), the Environmental Protection Agency (EPA) and the California Air Resources Board, and is based on years of comprehensive and robust analysis informed by a wide range of industry stakeholders, the 2015 National Academy of Science report, a wide range of technical experts, and a variety of other stakeholders.

As successful American businesses, we know the importance of recognizing and seizing opportunities. We support staying the course on the standards because they represent an important opportunity to strengthen our economy, save consumers and businesses money, enhance the competitiveness of the American auto industry, and mitigate climate risk.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne Kelly". The signature is fluid and cursive, with the first name "Anne" and last name "Kelly" clearly distinguishable.

Anne Kelly
On behalf of Business for Innovative Climate and Energy Policy [BICEP]
Director, BICEP

cc:

Secretary Elaine Chao
U.S. Department of Transportation
1200 New Jersey Ave, S.E.
Washington, DC 20590

Bill Charmley
U.S. Environmental Protection Agency
Fuel Emissions Laboratory/OAR
2565 Plymouth Road
Ann Arbor, MI 48105

Christopher Grundler
U.S. Environmental Protection Agency
1200 Pennsylvania, N.W.
Mail Code 6401A
Washington, D.C. 20460

Michael Olechiw
U.S. Environmental Protection Agency
Fuel Emissions Laboratory/OAR
2565 Plymouth Road
Ann Arbor, MI 48105

James Tamm
Department of Transportation
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.

Washington, DC 20590

Rebecca Yoon
Office of Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Mike McCarthy
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

Annette Herbert
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814



Correspondence Management System

Control Number: AX-17-000-5593

Printing Date: March 06, 2017 02:56:17



Citizen Information

Citizen/Originator: Christie, Jeanne

Organization: The Association of State Wetland Managers, Inc.
Address: 2 Basin Road, Windham, ME 04062

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5593 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Mar 21, 2017 **# of Extensions:** 0
Letter Date: Mar 1, 2017 **Received Date:** Mar 2, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: EML (E-Mail) **Priority Code:** Normal
Signature: AA-OW-Assistant Administrator - Signature Date: N/A
OW
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Priorities for State Wetland Programs in the New Administration
Instructions: AA-OW-Prepare draft response for signature by the Assistant Administrator for OW
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OCIR - Office of Congressional and Intergovernmental Relations
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OW	Mar 6, 2017	Mar 21, 2017	N/A
Instruction: AA-OW-Prepare draft response for signature by the Assistant Administrator for OW					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
-----------	--------	--------	------



The Association of State Wetland Managers, Inc.

"Dedicated to the Protection and Restoration of the Nation's Wetlands"

Executive Director

Jeanne Christie
32 Tandberg Trail, Suite 2A
Windham ME 04062
(207) 892-3399

Executive Director Emeritus

Jon A. Kusler, Esq.
1434 Helderberg Trail
Berne, NY 12023-9746
(518) 872-1804

Senior Policy Analyst

Peg Bostwick
7521 South Forest Hill Road
St. Johns, MI 48879
(517) 388-2214

Chairman

Kenneth Murin
PA Dept. of Environmental
Protection
RCSOB 400 Market Street
P.O. Box 8460
Mechanicsburg, PA 17105
(717) 772-5975

Vice Chairman

Tom Harcarik
OH Environmental Protection
Agency
50 West Town Street
Columbus, OH 43215
(614) 644-3639

Secretary/Treasurer

Mark Biddle
DE Dept. of Natural Resources
and Environmental Control
820 Silver Lake Blvd., Suite 220
Dover, DE 19904
(302) 739-9939

Members at Large

Denise Clearwater
MD Dept. of the Environment

Maryann McGraw
NM Environment Department

Doug Norris
MN Dept. of Natural Resources

Timothy Rach
FL Dept. of Environmental
Protection

Bill Ryan
OR Dept. of State Lands

March 1, 2017

The Honorable Scott Pruitt

Administrator

Environmental Protection Agency

U.S. EPA Headquarters - William J. Clinton Building

1200 Pennsylvania Avenue, NW (MC1101A)

Washington, DC 20460

Dear Administrator Pruitt,

As you begin your tenure at the U.S. Environmental Protection Agency (USEPA), we are writing to you to share the areas of public policy that are of high importance to the members of the Association of State Wetland Managers. Attached is a paper that provides some background on our organization and outlines six priority topics that we believe are important. Healthy wetlands are intrinsic to sustaining clean water for the Nation as a whole and the work of individual state wetland programs is essential to sustain these and other aquatic resources. We look forward to working with you and your team at USEPA on these and other issues.

The Association of State Wetland Managers was founded in 1983 to support the work of states in protecting and managing wetland resources through the application of sound science. ASWM is a national, nonpartisan organization that works with states and other partners to build state capacity to protect, conserve and restore wetlands. We look forward to continued collaboration with the U.S. Environmental Protection Agency.

We look forward to working with you.

If you have questions or would like to receive additional information, please contact ASWM's Executive Director, Jeanne Christie (jeanne.christie@aswm.org / 207-892-3399).

Sincerely,

Jeanne Christie
Executive Director

Cc: Mike Shapiro, USEPA
John Goodin, USEPA
ASWM Board



The Association of State Wetland Managers, Inc.

“Dedicated to the Protection and Restoration of the Nation’s Wetlands”

Priorities for State Wetland Programs in the New Administration

The Association of State Wetland Managers (ASWM) was established in 1983 to promote and enhance protection and management of wetland resources, to promote application of sound science to wetland management and to provide training and education for our members and the public. Currently thirty-nine states are members of the ASWM and state staffs from all 50 states as well as interested tribes, corporate and consultant interests participate in ASWM information transfer, education, program development, and training activities. The goals of ASWM include:

- Improve the coordination of wetland programs and policies at all levels of government
- Translate wetland science into fair and reasonable government policies
- Help states develop and implement wetland conservation and regulatory programs
- Integrate wetlands into broader landscape and resource management initiatives
- Provide training and capacity building for state wetland programs
- Build conservation and restoration partnerships among states, tribes, local governments, nonprofits, and other interested parties
- Encourage minority participation in wetland protection, restoration and management

A New York Example of Cost Savings from Natural Infrastructure

Numerous case studies have highlighted the cost-savings of natural vs. manmade infrastructure, including the New York Staten Island Bluebelt project where stormwater is controlled using existing natural drainage systems, e.g., streams, ponds, and wetlands. The Bluebelt “now includes about 400 acres of freshwater wetland and riparian stream habitat and almost 11 miles of stream corridor...[and]... it has successfully removed the scourge of regular flooding from southeastern Staten Island, while saving the City \$300 million in costs of constructing storm water sewers.”¹

Just over half of the wetlands in the lower 48 states (an estimated 116 million acres) have been lost through conversion to upland or open water since the American Revolution. Currently wetlands make up an estimated 5% of the surface area of the lower 48 states. These remaining wetlands deliver important natural ecosystem services² that benefit all Americans including the ability to maintain and improve water quality, soak up excess stormwater runoff, reduce flood damages, replenish drinking water supplies, buffer damage from storm surges along coastlines, and maintain healthy and abundant fish and wildlife populations. Wetland protection and restoration has been shown to be a viable tool to help reduce harmful algal blooms that are plaguing the nation’s waterbodies resulting in lost

¹ Appleton, A. (2012). The Staten Island Bluebelt: A Study in Sustainable Water Management. Retrieved September 9, 2013, from The Cooper Union: <http://cooper.edu/isd/news/waterwatch/statenisland>

² Ecosystem services, also referred to as “natural capital,” are the goods and services provided by the natural functions of nature which contribute to human well-being

recreational opportunities and even impacting public drinking water supplies. A 2011 report by Southwick Associates (a market research, statistics, and economics firm specializing in the outdoor recreation markets) estimates that the loss of wetlands in the U.S. since the 1950's has resulted in an economic loss of more than \$81 billion in wetland related ecosystem services.³ The Outdoor Industry Association in its 2012 report estimated annual expenditures of \$91.9 billion in gear- and travel- related sales, \$34.7 billion generated in jobs, and \$12.1 billion in federal, state and local taxes from fishing, hunting, and wildlife viewing alone. Sustainable fish and wildlife populations to support these industries are heavily dependent on healthy wetlands.⁴ The Millennium Ecosystem Assessment gave wetlands world-wide a value of \$15 trillion in 1997.⁵ A report on the impact of wetland restoration on local economies found that every dollar spent on coastal wetland restoration returns \$1.90 in economic activity.⁶

ASWM works closely with states, federal agencies, tribes, the regulated community, consultants, academia and many other partners who share an interest in state wetland programs and the health of water resources. We look forward to working with the new Administration to improve and establish policies and programs to support these goals. We believe that healthy, resilient wetlands and other aquatic resources support many of the goals of the Administration including investing in cost-effective water and environmental infrastructure, safeguarding clean drinking water, and keeping our nation's economies strong and resilient.

ASWM seeks to assist the Administration in achieving results from the following priorities for state wetland programs (both voluntary and regulatory).

1. **Supporting open communications between Federal and State Agencies.** The Clean Water Act and other federal statutes addressing environmental protection as well as natural hazard reduction provide the framework for federal and state government to work together to achieve statutory goals. Changes in federal policy may have impacts or unintended consequences to state programs that may not be anticipated by federal agencies. In addition the public often does not distinguish between federal and state programs and may mistake federal program changes for changes in state programs, which ends up undercutting state authority. Consistent, open communication is therefore very important and we hope the Administration will support the continuation of effective federal-state partnerships. For example the Administration has established eliminating the Clean Water Rule as a priority action. Regardless of the position individual states have taken with respect to the Clean Water Rule, national consistency and

³ Southwick Associates, Fernandina Beach Florida. 2011. *The Economics Associated with Outdoor Recreation, Natural Resources Conservation, and Historic Preservation in the United States*. Prepared for the National Fish and Wildlife Foundation.

⁴ Outdoor Industry Association. 2012. *The Outdoor Recreation Economy*

⁵ Millennium Ecosystem Assessment, 2005. *Ecosystems and Human Well-being: Synthesis*. Island Press, Washington, DC

⁶ *Restoration Returns: The contribution of Partners for Fish and Wildlife Program and Coastal Program Restoration Projects to Local U.S. Economies*. 2013. U.S. Fish and Wildlife Service

clarity on the extent of Clean Water Act jurisdiction is important not only to states who carry out programs through a combination of state regulations and the Clean Water Act but to the public and permit applicants as well. Relying on a case-by-case approach for jurisdictional determinations can cause confusion for states and property owners, leading to longer times for decisions and greater costs, particularly when jurisdiction is interpreted differently by courts throughout the country, such as occurred following the Rapanos/Carabell Supreme Court Decision (2006).

2. **Encouraging state assumption of the Clean Water Act Section 404 Permit Program.** Section 404(g) of the Clean Water Act allows states to assume the Section 404 permit program in lieu of the Army Corps of Engineers. While 46 states implement Section 402 of the Clean Water Act (the point source permitting program) only two states (Michigan and New Jersey) implement the Section 404 permit program. Even though only two states have undertaken Section 404, another twenty-one states issue state permits for dredge and fill activities. There are potentially a significant number of states interested in Section 404 Program assumption if existing barriers are overcome. Over the years thirty states have explored assumption, but rejected pursuing it due to lack of resources, uncertainty over the extent of waters that can be assumed, and the need for significant modifications to existing state statutes and regulations. Most recently these have included states such as Oregon, Alaska, Minnesota, and Virginia. We hope the new Administration will be interested in working with ASWM, states and other state nonprofit organizations to remove the current barriers to state assumption of the Section 404 program.
3. **Fully funding Clean Water Act programs including Wetland Program Development Grants.** The ASWM supports fully funding Clean Water Act grant programs to states and tribes including State and Tribal Assistance Grants, §106 grant funding, and §319 nonpoint source program grants. In particular, the §104(b)(3) Wetland Program Development Grants are very important to states. These program funds support development of state capacity to protect wetlands, water quality and aquatic resources through wetland programs nationwide. Wetland Program Development Grants provide critical resources that benefit not only individual states but water quality nationwide recognizing that water resources often flow across state lines. In addition states have a longstanding interest in expanding the eligible activities under this grant program to include program implementation.
4. **Offering technical support and training to state wetland programs to deliver effective and efficient permitting that ensures compliance with state water quality requirements and other applicable standards.** Delivery of balanced, efficient state wetland regulatory programs is important. Permit applicants desire consistent requirements and the timely issuance of permits. The general public desires clean water and its attendant benefits including recreational opportunities and abundant fish and wildlife, as well as protection from natural hazards such as flooding. Successful wetland programs can achieve all of these objectives by incorporating sound science and legally defensible policies. Often innovation and program improvement is

accomplished through peer to peer sharing, training, and exploration of new scientific findings and technology as well as information about recent court cases and changes in federal programs and policies. In fact, cooperation and consensus-based agreements can sometimes lead to successful environmental outcomes that are less costly than existing regulations—either through improvements in the regulatory program or development of new nonregulatory initiatives. ASWM has a long history of assisting states achieve these goals, and is uniquely positioned to help states learn from each other’s experiences.

5. **Providing accurate maps of the nation’s aquatic resources.** The lack of ample, clean water is a growing concern across the United States. An important tool in addressing this issue will be up to date and accurate maps of the location of water resources including streams, lakes, rivers, wetlands and groundwater. For many reasons, but primarily due to lack of adequate funding, many existing maps of water resources are not accurate. For example the National Wetlands Inventory, maintained by the U.S. Fish and Wildlife Service, provides critical, detailed information on the abundance, characteristics and distribution of U.S. wetlands, but is based largely on imagery from the 1980’s and urgently needs updating with state-of-the-art mapping tools. Wetlands and other water resources are changeable in size and quality due to changes in land use, weather patterns, and other drivers. Accurate maps of the location and distribution of water resources is essential to sound decision making by both government and developers when rebuilding infrastructure and conserving water for a wide variety of users including business and industry. ASWM has provided leadership and has facilitated the sharing of state-of-the-art wetlands mapping techniques and innovations among states, agencies, academic institutions, consultants, and businesses.

6. **Leveraging opportunities to reduce pollution and natural hazards, protect drinking water, and reduce costs through natural infrastructure solutions.** Pollution from nonpoint source runoff and streambank erosion continues to be a significant threat to the nation’s water

quality and people’s use of our nation’s water resources. Flood damages are also on the increase as are wildfires and droughts. Wetlands, floodplains, stream buffers, living shorelines and other forms of natural infrastructure are widely recognized as natural, cost-effective and sustainable approaches to reduce threats to human health and safety and the environment. For example, groundwater sources provide drinking water for 51% of the total U.S. population and 99% of the rural population and wetlands can provide water to recharge depleted aquifers.

Local benefits from wetlands
Industry-based risk models indicate that coastal wetlands saved more than \$625 million in avoided flood damage from Hurricane Sandy.⁷

⁷ Narayan, S., Beck, M.W., Wilson, P., Thomas, C., Guerrero, A., Shepard, C., Reguero, B.G., Franco, G., Ingram, C.J., Trespalacios, D. 2016. Coastal Wetlands and Flood Damage Reduction: Using Risk Industry-based Models to Assess Natural Defenses in the Northeastern USA. Lloyd’s Tercentenary Research Foundation, London.

States, cities and smaller communities across the country are pursuing a wide variety of natural infrastructure solutions. Quantifying ecosystem services provided by natural resources such as wetlands is an important tool for state and local decision-makers in weighing the initial and long-term costs and benefits of these approaches. Identifying opportunities to support adoption of successful, cost-saving practices provides significant potential for win-win outcomes--safer, healthier communities and a healthier, more resilient environment for less cost.

Conclusion

The Association of State Wetland Managers has a long history of collaborating successfully with states, federal agencies, and a broad cross section of interest groups engaged in shaping wetland and broader water resources policy. Wetlands and other aquatic resources are important to both a healthy economy as well as a healthy environment. We look forward to working with the Administration on the areas of state interest described above as well as areas identified by the Administration. For more information please contact Executive Director Jeanne Christie at (207) 892-3399, jeanne.christie@aswm.org or visit the Association of State Wetland Managers web page at www.aswm.org.



Correspondence Management System

Control Number: AX-17-000-5617

Printing Date: March 06, 2017 02:54:18



Citizen Information

Citizen/Originator: O'Hare, Andrew T.

Organization: The Fertilizer Institute
Address: 425 Third Street, SW, Washington, DC 20024

Gupton, Richard D.

Organization: Agricultural Retailers Association
Address: 1156 15th Street, NW, Washington, DC 20005

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5617 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Mar 21, 2017 **# of Extensions:** 0
Letter Date: Mar 2, 2017 **Received Date:** Mar 6, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: EML (E-Mail) **Priority Code:** Normal
Signature: AA-OLEM-Assistant **Signature Date:** N/A
Administrator-OLEM
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Support for Risk Management Program Petition for Reconsideration
Instructions: AA-OLEM-Prepare draft response for signature by the Assistant Administrator for OLEM
Instruction Note: N/A
General Notes: N/A
CC: Eileen Naples - AO-IO
OAR - Office of Air and Radiation -- Immediate Office
OGC - Office of General Counsel -- Immediate Office
OP - Office of Policy
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OLEM	Mar 6, 2017	Mar 21, 2017	N/A
Instruction: AA-OLEM-Prepare draft response for signature by the Assistant Administrator for OLEM					

Supporting Information

Supporting Author: N/A



The Fertilizer Institute

Nourish, Replenish, Grow



AGRICULTURAL
RETAILERS
ASSOCIATION

March 2, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt,

The Fertilizer Institute¹ (TFI) and the Agricultural Retailers Association² represent fertilizer manufacturers, transporters, wholesaler, brokers and retailers. We are writing in regards to a Clean Air Act petition for reconsideration filed on February 28, 2017, by a collection of associations under the signature of Justin Savage with Hogan Lovells.

The petition requests that the agency reconsider certain aspects of changes to the EPA risk management program (RMP), which were promulgated and published in the Federal Register on January 13, 2017 (82 Fed. Reg. 4594). Many TFI and ARA members operate facilities that are currently subject to the RMP. We have significant concerns with a number of the provisions included the recent program changes, most notably, the new obligations to share very sensitive, facility-specific site security information with local emergency planners and the general public. We agree with representatives from other federal agencies, such as the Department of Homeland Security, who believe that the new obligations are not wise or necessary.

Accordingly, we strongly support the petition for reconsideration filed this week by our association colleagues and recommend that the agency approve the petition and expeditiously move forward with addressing the specific rulemaking inadequacies cited therein.

We would be delighted to address further our support for this petition and our concerns with the recent changes to the RMP at your convenience. We may be reached at aohare@tfi.org ((202) 515-2704) or richard@aradc.org ((202) 457-0285). Thank you for your attention to this matter.

Sincerely,

Andrew T. O'Hare
Vice President, Public Policy
The Fertilizer Institute

Richard Gupton
Sr. Vice President, Public Policy and Counsel
Agricultural Retailers Association

¹ TFI represents the nation's fertilizer industry including producers, importers, retailers, wholesalers, and companies that provide services to the fertilizer industry. TFI's members provide nutrients that nourish the nation's crops, helping to ensure a stable and reliable food supply. TFI's full-time staff, based in Washington, D.C., serves its members through legislative, educational, technical, economic, information, and public communications programs.

² ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include: fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.



Correspondence Management System

Control Number: AX-17-000-5562

Printing Date: March 06, 2017 11:34:07



Citizen Information

Citizen/Originator: Karpinski, Gene

Organization: League of Conservation Voters Education Fund
Address: 1920 L N.W., Washington, D.C. 20038

Kimmell, Kenneth

Organization: Union of Concerned Scientists
Address: 1825 K Street NW, Washington, DC 20001

Hamilton, Jonna

Organization: Union of Concerned Scientists - Clean Vehicle Program
Address: 1825 K Street, NW, Washington, DC 20001

Suh, Rhea

Organization: Natural Resources Defense Council
Address: 1152 15th Street, NW, Washington, DC, DC 20005

Krupp, Fred

Organization: Environmental Defense Fund
Address: 1875 Connecticut Avenue, N.W., Washington, D.C. 20009

Alt, Margie

Organization: Environment America
Address: 218 D Street, SE 2nd Floor, Washington, DC 20003

Brune, Michael

Organization: Sierra Club
Address: 50 F Street, NW Eighth Floor, Washington, DC 20001

Becker, Dan

Organization: Safe Climate Campaign
Address: Address Unknown

Nadel, Steven M

Organization: American Council for an Energy-Efficient Economy
Address: 529-14th Street, N.W., Washington, DC 20045

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number:	AX-17-000-5562	Alternate Number:	N/A
Status:	Pending	Closed Date:	N/A
Due Date:	Mar 20, 2017	# of Extensions:	0
Letter Date:	Mar 3, 2017	Received Date:	Mar 3, 2017
Addressee:	AD-Administrator	Addressee Org:	EPA
Contact Type:	EML (E-Mail)	Priority Code:	Normal
Signature:	AA-OAR-Assistant Administrator - OAR	Signature Date:	N/A
File Code:	404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.		
Subject:	DRF - Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation		



Correspondence Management System

Control Number: AX-17-000-5562

Printing Date: March 06, 2017 11:34:07



Instructions: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR
Instruction Note: N/A
General Notes: N/A
CC: Kristien Knapp - AO-IO
OGC - Office of General Counsel -- Immediate Office
OP - Office of Policy
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
StephanieN Brown	OEX	OAR	Mar 6, 2017	Mar 20, 2017	N/A
Instruction: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
StephanieN Brown	OEX	Assign OAR as lead office	Mar 6, 2017

Comments

Commentator	Comment	Date
No Record Found.		

March 3, 2017

Administrator Scott Pruitt
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation

Dear Administrator Pruitt,

We write in strong support of the 2017 Final Determination on the Appropriateness of Model Year 2022-2025 Light Duty Vehicle Greenhouse Gas Emissions Standards. The decision to complete the Environmental Protection Agency's (EPA) Midterm Evaluation process is supported by an extremely robust record, presented in the Technical Assessment Report that EPA and the National Highway Transportation Safety Administration (NHTSA) jointly released in July 2016 as well as additional responses and analyses accompanying the Proposed Determination four months later. At every step in the process, the technical analyses clearly demonstrated that these standards remain appropriate and leverage low-cost, available technologies that reduce greenhouse gas emissions, save fuel, enhance our nation's energy security, and save American consumers money at the pump. The Agency should therefore decline requests from industry trade groups to withdraw this Final Determination, which would unnecessarily re-open the EPA's Midterm Evaluation.

This Final Determination, released January 13, 2017, came as a result of a thorough and open process of review and consultation over the course of years, drawing on independent technical analysis and multiple opportunities for public comment. EPA's analysts solicited input from a wide range of stakeholders, including automobile manufacturers and suppliers, and took seriously and responded to that input. The Technical Assessment Report (TAR) released last year, on which this Final Determination is largely based, relies on extensive technical and economic analysis by three government agencies of the most current data available, including teardown studies to estimate costs, extensive vehicle testing to assess the wide variety of technologies deployable to achieve the standards, and full-vehicle simulation to project forward even further advances. In addition, the agencies held extensive meetings with all of the auto manufacturers well before they started writing the TAR and continued to solicit input from them throughout the process, ensuring that the industry input to the final document was robust. The conclusion drawn from this data was clear: automakers can comply with the standards with available, cost-effective technology. Manufacturers are bringing new conventional technologies to the market on time and at a faster pace and lower cost than the Agency projected in the 2012 rulemaking. In fact, EPA's analysis shows that automakers could actually *surpass* the 2025 standards, but the Agency decided to forego strengthening the standards in favor of enhancing the certainty needed to promote industry investment. The Agency considered the full range of in-depth technical, scientific and socioeconomic analyses, including those provided by industry stakeholders. Critically, the Agency found no basis for weakening or reversing the standards,

instead finding a clear and compelling basis to make the determination that the current MY2022-2025 standards remain appropriate.

Withdrawing the Final Determination at this point would create new and unnecessary uncertainty to industry and consumers—and put at risk the very real benefits that Americans have gained from the Light Duty Vehicle Greenhouse Gas Emissions Standards. These standards have driven innovation that has cut carbon pollution and fuel use from the average car, truck, and SUV, resulting in real savings for the average new car buyer the moment the vehicle leaves the lot. This innovation from suppliers and manufacturers has created thousands of new American jobs: the automotive industry has added nearly 700,000 good jobs since 2009.¹ In the years to come, the standards are slated to add thousands more jobs with investment in the technologies needed to meet these standards and compete in the global marketplace, and many more jobs indirectly as a result of consumers' expenditure of fuel savings.² The warnings of automaker trade groups notwithstanding, these manufacturers are enjoying record sales while continuing to sell more and more efficient cars, trucks, and SUVs to their consumers. And importantly, these standards have resulted in nearly \$35 billion in savings at the pump for Americans while continuing to reduce emissions—taken in total, the MY2012-2025 standards finalized and reaffirmed by the EPA stand to save consumers more than \$1 trillion over the lifetimes of these vehicles while eliminating 5 billion tons of carbon pollution.³

The groups requesting withdrawal of the Final Determination continue to reference outdated and critically flawed studies. In their requests, the trade groups make several claims that are plainly at odds with the factual record and are inconsistent with the real-world track record of job creation, innovation, and consumer savings these standards have delivered. For example, there is no rational basis for the assertion that these standards could cost 1.1 million jobs, a number which rests upon false assumptions and economic models that are not internally consistent. In claiming that more advanced technologies would be required to meet the standards, the trade organizations single out one scenario of an industry analysis but ignore another from the same report which shows that, in fact, the standards can be met with conventional technologies. And to suggest that these standards adversely impact low-income individuals is not only at odds with the peer-reviewed literature but strains credulity, since these standards will reduce the fuel costs of those for whom gas prices are the greatest burden. There is an extensive and well-established body of evidence refuting these industry assertions, which EPA analyzed as part of its thorough review, and our organizations plan to communicate further evidence to the Agency underscoring the fallacies and shortcomings of the trade groups' claims.

¹ Bureau of Labor and Statistics. Current Employment Statistics (National): CES3133600101, CES4244110001, CES8081112001.

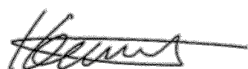
² BlueGreen Alliance and American Council for an Energy-Efficient Economy. 2012. *Gearing Up: Smart Standards Create Good Jobs Building Cleaner Cars*. <http://aceee.org/research-report/e127>

³ EPA, Final Rulemaking to Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards: Regulatory Impact Analysis (2010) (Tables 5-3, 6-18)
EPA, Regulatory Impact Analysis: Final Rulemaking for 2017-2025 Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards (2012) (Tables 10-32, 10-35)
EPA, Proposed Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation (2016) (Tables IV.6, IV.13)

EPA is empowered to protect the health and welfare of Americans and to preserve the natural environment. The Agency would be derelict in its duty if, as administrator, you discarded clear scientific and technical evidence that supports reaffirming the Light Duty Vehicle Greenhouse Gas Standards. The record is clear: this policy reduces pollution, saves consumers money, spurs the development of cleaner technologies, and reduces the risks of climate change. Any decision that runs contrary to this extensive, well-documented record would be arbitrary and unlawful.

Accordingly, we strongly urge you to leave undisturbed the Agency's science-based determination that these standards remain appropriate. We hope you will consider the robust body of data supporting the Final Determination, which will continue the Agency's record of progress on cutting emissions and protecting Americans.

Sincerely,



Kenneth Kimmell, President
Union of Concerned Scientists



Rhea Suh, President
Natural Resources Defense Council



Fred Krupp, President
Environmental Defense Fund



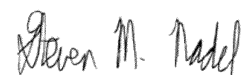
Margie Alt, Executive Director
Environment America



Michael Brune, Executive Director
Sierra Club



Dan Becker, Director
Safe Climate Campaign



Steve Nadel, Executive Director
American Council for an Energy-Efficient Economy



Gene Karpinski, President
League of Conservation Voters

CC:

Secretary Elaine Chao, DOT
Kevin Green, DOT
Chris Grundler, EPA
Bill Charmley, EPA
Michael Olechiw, EPA
James Tamm, NHTSA
Rebecca Yoon, NHTSA
Mary Nichols, CARB
Alberto Ayala, CARB
Annette Hebert, CARB
Mike McCarthy, CARB

To: Schnare, David[schnare.david@epa.gov]
Cc: Smith, Loren (OST)[Loren.Smith@dot.gov]
From: Catanzaro, Michael J. EOP/WHO
Sent: Mon 3/13/2017 8:09:14 PM
Subject: RE: CAFE Notice signature copy

Any update on this? Thanks.

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Monday, March 13, 2017 10:24 AM
To: Catanzaro, Michael J. EOP/WHO [REDACTED] EOP/Ex. 6 >
Cc: Smith, Loren (OST) <Loren.Smith@dot.gov>
Subject: Re: CAFE Notice signature copy

Loren

Can you let me know when steps to ensure publication on Wednesday are in place. Usually a notice sent before noon on Tuesday guarantees a Wed publication.

d

Sent from my iPhone

On Mar 13, 2017, at 9:36 AM, Catanzaro, Michael J. EOP/WHO

[REDACTED] EOP/Ex. 6 > wrote:

Just wanted to be sure that we can have this document on display in the Fed Register on Wednesday, day of POTUS event in MI. Are we on track for that?

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Thursday, March 9, 2017 8:36 PM
To: Smith, Loren (OST) <Loren.Smith@dot.gov>
Cc: McCown, Brigham (OST) <brigham.mccown@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; Smith, Ja'Ron K. EOP/WHO <[REDACTED] EOP/Ex. 6 Catanzaro, Michael J. EOP/WHO <[REDACTED] EOP/Ex. 6 >; Moran, John S. EOP/WHO <[REDACTED] EOP/Ex. 6 >; Fulton, Finch (OST) <Finch.Fulton@dot.gov>
Subject: Re: CAFE Notice signature copy

Deliberative Process Privilege/Ex. 5

dschnare

On Mar 9, 2017, at 4:13 PM, Smith, Loren (OST) <Loren.Smith@dot.gov> wrote:

Received – thank you!

From: Schnare, David [<mailto:schnare.david@epa.gov>]
Sent: Thursday, March 09, 2017 2:49 PM
To: Smith, Loren (OST)
Cc: McCown, Brigham (OST); Pugliese, Anthony (OST); Ja'Ron Smith; Michael Catanzaro; John.S.Moran@dot.gov (EOP/Ex. 6); Fulton, Finch (OST)
Subject: RE: CAFE Notice signature copy

Loren:

I gave our assistant your name and phone number.

d.

From: Smith, Loren (OST) [<mailto:Loren.Smith@dot.gov>]
Sent: Thursday, March 9, 2017 2:48 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: McCown, Brigham (OST) <brigham.mccown@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; Ja'Ron Smith (EOP/Ex. 6); Michael Catanzaro (EOP/Ex. 6); John.S.Moran@dot.gov (EOP/Ex. 6); Fulton, Finch (OST) <Finch.Fulton@dot.gov>
Subject: Re: CAFE Notice signature copy

To whom is it being delivered?

You can give my name for the delivery, or simply to the Immediate Office of the Secretary.

Or send it to:

Ruth Knouse

Director

Executive Secretariat

On Mar 9, 2017, at 2:45 PM, Schnare, David <schnare.david@epa.gov> wrote:

We have autopen'd the final notice and it is being carried over to you for the Secretary's signature. OFR requires both signatures on the same document. Once you have it signed by the Secretary, please hold it until we know when to send it to OFR. Then your folks can send it to OFR.

Thanks,
dschnare

From: Jackson, Ryan
Sent: Thursday, March 9, 2017 6:44 AM
To: Schnare, David <schnare.david@epa.gov>
Cc: Smith, Loren (OST) <Loren.Smith@dot.gov>; McCown, Brigham (OST) <brigham.mccown@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; Ja'Ron Smith { **EOP/Ex. 6** };
Michael Catanzaro { **EOP/Ex. 6** };
John.S.Moran{ **EOP/Ex. 6** } Fulton, Finch (OST) <Finch.Fulton@dot.gov>
Subject: Re: Dave/all - re CAFE - here is DOT's final draft

Thanks David for all the work We'll sign it today.

Ryan Jackson

Chief of Staff

U.S. EPA

Personal Phone/Ex. 6

On Mar 8, 2017, at 1:35 PM, Schnare, David <schnare.david@epa.gov> wrote:

Thank you Loren. I will get a name put into the proper place and send the final back to you for signature.

I'm not sure when our Administrator will be signing this. He is in today but out the rest of the week. We will find a way to get this done as quickly as possible. I'll let you know when we have a signed copy.

David W. Schnare

Assistant Deputy Administrator

From: Smith, Loren (OST) [<mailto:Loren.Smith@dot.gov>]
Sent: Wednesday, March 8, 2017 11:14 AM
To: Schnare, David <schnare.david@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; McCown, Brigham (OST) <brigham.mccown@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; Ja'Ron Smith **EOP/Ex. 6** >; Michael Catanzaro **EOP/Ex. 6** >; John.S.Moran(**EOP/Ex. 6**) Fulton, Finch (OST) <Finch.Fulton@dot.gov>
Subject: Dave/all - re CAFE - here is DOT's final draft

As yet unsigned - need EPA to insert contact info and remove your original draft label. Presume next step is for your team to review and submit for Administrator Pruitt's signature, then back to DOT.

Please let me know that you've received and your vision of plan forward.

+++

Loren Smith

U.S. Department of Transportation

West Building – W85-115

loren.smith@dot.gov

202-430-2952

To: Schnare, David[schnare.david@epa.gov]
From: Zack Colman
Sent: Tue 3/14/2017 7:37:05 PM
Subject: Re: Endangerment finding

Hi David,

I know we tried on this a couple weeks ago and, admittedly, it came a bit out of the blue. I was wondering if you had time over the next couple weeks to meet so I could introduce myself. As you can guess by the job title, I cover the energy and environment space exclusively (what's misleading about the title is I'm 95 percent reporter, 5 percent editor — what newspapers can't pay in money they try to make up for in fancy titles).

Anyway, let me know if you've got some free time coming up. Would be great to get something on the calendar.

-Zack

On Wed, Feb 22, 2017 at 9:18 PM, Zack Colman <colmanz@csmonitor.com> wrote:

Understood. Thought I might as well try!

On Wed, Feb 22, 2017 at 6:49 PM, Schnare, David <schnare.david@epa.gov> wrote:

Not something I can do.

From: Zack Colman [mailto:colmanz@csmonitor.com]
Sent: Wednesday, February 22, 2017 5:19 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: Endangerment finding

Hi David,

Zack Colman here, deputy energy & enviro editor with CSMonitor. Hope this email finds you well. Wanted to know if you had time to chat about the endangerment finding. Had a couple questions about procedure.

Spoke to Sen. Inhofe who mentioned the idea of opening up the science and including different findings. Not sure how that would impact the endangerment finding — whether that would mean a less aggressive GHG policy was needed, or whether it is just the beginning of an avenue to submit new literature that would then need to go through the regulatory process.

Anyway, that's not the only question I have with respect to the endangerment finding. Maybe it's not one that you can help on, but perhaps there's others. Can email me here, though a phone call might be most efficient — can get me at [248.563.9744](tel:248.563.9744).

Thanks,

-Zack

--

Zack Colman

Deputy Energy/Enviro Editor

Christian Science Monitor

Knight Science Journalism fellow at MIT, '15-16

[248.563.9744](tel:248.563.9744)

Twitter: @zcolman

--

Zack Colman

Deputy Energy/Enviro Editor

Christian Science Monitor

Knight Science Journalism fellow at MIT, '15-16

[248.563.9744](tel:248.563.9744)

Twitter: @zcolman

--

Zack Colman

Deputy Energy/Enviro Editor
Christian Science Monitor
Knight Science Journalism fellow at MIT, '15-16
248.563.9744
Twitter: @zcolman

To: 2017HQfirstassistants[2017HQfirstassistants@epa.gov];
2017Regionfirstassistants[2017Regionfirstassistants@epa.gov]
Cc: Sowell, Sarah[Sowell.Sarah@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov];
Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]; Greaves,
Holly[greaves.holly@epa.gov]
From: Flynn, Mike
Sent: Thur 3/2/2017 1:26:56 AM
Subject: Talking Points on EPA Budget Process
2018 Budget Process Talking Points - 030117docx.docx

Hi everyone,

Sorry for the delay in getting you some materials on the budget process – it's been a busy day on a number of fronts.

Attached are talking points that OPA and OCFO worked on together that you can use in your discussions with staff. In addition, I'm passing on a note from Mike Shapiro, which I understand is similar to a note Bob Kavlock sent to his staff today. The TPs focus on the budget process, and Mike's note provides a little more detail on the various steps. It's fine to draw on the TPs and Mike's note in your communications with your staff.

This is an anxious time for our staff so I encourage you to reach out to your folks in the way you feel is best for your office/region. As you all know, we are in the early stages of a long budget process, and we'll need to continue to work together to keep our folks informed.

Thanks to all of you - Mike

Mike Flynn

Acting Deputy Administrator

U.S. Environmental Protection Agency

202-564-4711

From: Shapiro, Mike
Sent: Wednesday, March 01, 2017 6:17 PM

To: Flynn, Mike <Flynn.Mike@epa.gov>; Reeder, John <Reeder.John@epa.gov>
Subject: Fwd: EPA Budget Process

This is note I sent, largely copied from Bob Kavlock's note to ORD

Michael Shapiro

Deputy Assistant Administrator

US EPA, Office of Water

Begin forwarded message:

From: "Shapiro, Mike" <Shapiro.Mike@epa.gov>
Date: March 1, 2017 at 10:59:11 AM EST
To: OW-ALL-FEDS <OW-ALL-FEDS@epa.gov>
Subject: EPA Budget Process

Colleagues,

By now I am sure you have heard or read reports of proposed budget cuts to EPA and other parts of the government. While I cannot, at this time, comment on their authenticity, I can state that we are in just the first part of a long engagement between the Executive and Congressional branches of government to establish our appropriation level for FY2018.

As many of you may know, the Agency has received FY2018 budget guidance from OMB. At present this is a highly confidential process the details of which cannot be shared, but please be assured we will do everything in our power to protect our ability to support the mission of Agency in protecting human health and the environment.

The next major step will occur on March 16th, when OMB is scheduled to release a "Budget Blueprint" that will outline the total dollars and FTEs for EPA that the President will submit to Congress for consideration. This will be followed in early May by a more detailed budget that is more characteristic of traditional budget submissions. A lot of effort needs to go in to defining the budget at a fairly fine level of detail between March 16th and early May. Congress will then deliberate on the

submission and will ultimately approve an appropriation level for us (either through a regular appropriation or has been more recently the case, a continuing resolution).

I have been assured that Administrator Pruitt will be working hard on our behalf to effectively represent us in the budget deliberations. That does not mean that changes will not happen, but it does mean that he wants to take a pragmatic approach to our appropriation.

In addition, many of you have asked about what will happen when our current (FY2017) continuing resolution funding runs out the end of April. There's not much to report on with respect to that issue. Congressional appropriations staffs are working on this, but I haven't seen any recent numbers from their process.

As I get more information that I can share, I promise to keep you updated. Please keep in mind that we are only at the very early stages of the FY2018 budget process and many more negotiations and discussions need to occur before we are at the end of the process. In the meantime, remember to focus on the good work you all do and not get too wrapped up in the swirl of the media.

Mike Shapiro

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

2018 Budget Process: Suggested Talking Points for Discussions with Staff

- I am sure many of you have seen news articles about the upcoming fiscal year 2018 budget.
- I want to take a minute to briefly explain how the process works.
- The annual budget formulation process entails a number of stages that take place over several months and allow for agency input at multiple points.
- As one of the first steps, EPA works with OMB to develop the President's budget proposal for the agency.
- On Monday, we began the iterative process of negotiating with OMB. Leadership from across the agency is involved in the development of EPA's input, and Administrator Pruitt is engaged on behalf of the Agency. Because this is an internal deliberative process, the negotiations are embargoed.
- After working with each of the federal agencies and completing these negotiations, the President will send his federal budget proposal to Congress for consideration.
- Congress will then consider the President's budget proposal and begin working on – and debating -- appropriations bills.
- Once passed by Congress and signed by the President, appropriations bills enact federal agency budgets into law. It is only then that we know what our final budget numbers will be.
- You'll likely see more news stories as this process continues.
- While it is way too early to speculate on how any of this will fall out, I want to remind you that we still have many months before anything is finalized and that we're only at the very first step of a longer process.
- I am committed to keeping you informed as information is available. In the meantime, please don't hesitate to come to me with any questions you may have.
- As we go through this time, it's most important that you keep your focus on the important work you all do in carrying out the Agency's mission of protecting public health and the environment.

To: Schnare, David[schnare.david@epa.gov]
From: Vizian, Donna
Sent: Wed 3/1/2017 12:13:54 PM
Subject: Pay

Personal Matters/Ex. 6

To: Schnare, David[schnare.david@epa.gov]
From: Kaplan, Robert
Sent: Mon 3/13/2017 8:01:55 PM
Subject: RE: Bravo zulu

Well said and much needed. Thanks for thinking of us. - Bob

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Cell: Personal Phone/Ex. 6

Direct: 312-886-1499

Main: 312- 886-3000

From: Schnare, David
Sent: Monday, March 13, 2017 1:33 PM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>
Subject: Bravo zulu

For those of you with a Navy background, you can see in the subject line what I'm about to say.

Bravo Zulu (or BZ) is Navy slang for "well done."

I want to take just a moment of your time to thank all of you for the hard work you've done helping the Administrator get his agenda moved forward with dispatch. I'm encouraged by your willingness to help and your ability to help explain our complex job.

New folks are coming on board, men and women who will also need our help learning what we do and all the ways we can do it. I know you will help them as you have helped the transition team and the Administrator, his Chief of Staff and his Associate Administrator for Policy.

There will be many challenges over the next several months. New policy directions, new managers and new messages coming from within and surely from without. During this period of flux, I know you will keep your and your staff's focus on the task before us – protecting public health and welfare.

With every best wish,

David

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]
From: Brown, Byron
Sent: Thur 3/9/2017 9:35:09 PM
Subject: Cafe

David - can you loop in Sarah Rees on timing of cafe notice going to FR? Thanks.

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: Minoli, Kevin
Sent: Wed 3/15/2017 7:09:12 PM
Subject: Re: Resignation

Can I buy you a drink tonight? Or in my office now?

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Mar 15, 2017, at 2:41 PM, Schnare, David <schnare.david@epa.gov> wrote:

Dear colleagues:

Transitions begin and they end. I have been honored to have had the opportunity to serve the Trump Administration, but I have completed as much as I am able. Thus it is time for me to move on.

I will resign effective COB Friday and will be on leave until then.

My contact information for any who wish to remain in touch:

Personal Phone/Ex. 6

Personal Email/Ex. 6

Personal Phone/Ex. 6

I wish each of you the best.

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Dravis, Samantha[dravis.samantha@epa.gov]; Schnare, David[schnare.david@epa.gov];
Brown, Byron[brown.byron@epa.gov]; Konkus, John[konkus.john@epa.gov]
From: Jackson, Ryan
Sent: Wed 3/1/2017 12:02:39 PM

The corps is signing this morning.

Lamont was stuck on a tarmac yesterday and they have autopen issues too.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Hope, Brian
Sent: Mon 3/13/2017 7:53:26 PM
Subject: FW: OIG Report: "EPA Has Adequate Controls to Manage Advice From Science and Research Federal Advisory Committees, but Transparency Could Be Improved"
[_epaoig_20170313-17-P-0124_cert.pdf](#)

From: OIG News

Sent: Monday, March 13, 2017 9:30 AM

To: Vizian, Donna <Vizian.Donna@epa.gov>

Cc: Pruitt, Scott <Pruitt.Scott@epa.gov>; Bloom, David <Bloom.David@epa.gov>; Rutherford, Debbie <Rutherford.Deborah@epa.gov>; Deane, Benita <Deane.Benita@epa.gov>; Anthony, Sherri <Anthony.Sherri@epa.gov>; Grzegozewski, Nicholas <Grzegozewski.Nicholas@epa.gov>; Howard, MarkT <Howard.Markt@epa.gov>; Trent, Bobbie <Trent.Bobbie@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Hull, George <Hull.George@epa.gov>; Valentine, Julia <Valentine.Julia@epa.gov>; Showman, John <Showman.John@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Hardy, Michael <Hardy.Michael@epa.gov>; Cuscino, Glen <Cuscino.Glen@epa.gov>; Lemley, Lauren <Lemley.Lauren@epa.gov>; Vincent, Marc <Vincent.Marc@epa.gov>; Weiner, Janet <Weiner.Janet@epa.gov>; Hingeley, Maureen <Hingeley.Maureen@epa.gov>

Subject: OIG Report: "EPA Has Adequate Controls to Manage Advice From Science and Research Federal Advisory Committees, but Transparency Could Be Improved"

Attached is the EPA Office of Inspector General (OIG) report, *EPA Has Adequate Controls to Manage Advice From Science and Research Federal Advisory Committees, but Transparency Could Be Improved* (Report No. 17-P-0124). This report will be available to the public on the OIG's website at www.epa.gov/oig.



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL



Science and Research

EPA Has Adequate Controls to Manage Advice From Science and Research Federal Advisory Committees, but Transparency Could Be Improved

Report No. 17-P-0124

March 13, 2017



Report Contributors:

Patrick Gilbride
Erin Barnes-Weaver
Todd Goldman
James Kohler
Kalpana Ramakrishnan

Abbreviations

BOSC	Board of Scientific Counselors
CASAC	Clean Air Scientific Advisory Committee
CHPAC	Children's Health Protection Advisory Committee
CMO	Committee Management Officer
CSAC	Chemical Safety Advisory Committee
DFO	Designated Federal Officer
ELAB	Environmental Laboratory Advisory Board
EPA	U.S. Environmental Protection Agency
FAC	Federal Advisory Committee
FACA	Federal Advisory Committee Act
FIFRA SAP	Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel
FY	Fiscal Year
GAO	U.S. Government Accountability Office
GSA	U.S. General Services Administration
HSRB	Human Studies Review Board
OIG	Office of Inspector General
OMB	Office of Management and Budget
OROM	Office of Resources, Operations and Management
SAB	Science Advisory Board
S&R	Science and Research
U.S.C.	United States Code

Cover photo: Members of the Science Advisory Board, an EPA federal advisory committee, attend a meeting. (EPA photo)

Are you aware of fraud, waste or abuse in an EPA program?

EPA Inspector General Hotline

1200 Pennsylvania Avenue, NW (2431T)
Washington, DC 20460
(888) 546-8740
(202) 566-2599 (fax)
OIG_Hotline@epa.gov

Learn more about our [OIG Hotline](#).

EPA Office of Inspector General

1200 Pennsylvania Avenue, NW (2410T)
Washington, DC 20460
(202) 566-2391
www.epa.gov/oig

Subscribe to our [Email Updates](#)
Follow us on Twitter [@EPAoig](#)
Send us your [Project Suggestions](#)



At a Glance

Why We Did This Review

We conducted this evaluation to determine what system(s) of controls the U.S. Environmental Protection Agency (EPA) has in place to engage with and manage the recommendations and advice from its science and research (S&R) federal advisory committees (FACs) and whether this system of controls is effective.

FACs are an important tool for building consensus and providing scientific input and recommendations from the agency's diverse customers, partners and stakeholders. We reviewed the EPA's eight S&R FACs, which had a combined fiscal year (FY) 2015 operating budget of more than \$8 million. These FACs created 84 products from FY 2013 through FY 2015, and we randomly selected and analyzed 13 of these products to determine the effectiveness of the EPA's system of controls to manage FAC recommendations. This report does not address the EPA's implementation of FAC recommendations.

This report addresses the following EPA goal or cross-agency strategy:

- *Embracing EPA as a high-performing organization.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

Listing of [OIG reports](#).

EPA Has Adequate Controls to Manage Advice From Science and Research Federal Advisory Committees, but Transparency Could Be Improved

What We Found

The EPA has an adequate system of controls to engage with and manage the recommendations and advice from its eight S&R FACs. The 1972 Federal Advisory Committee Act establishes procedures for the management of FACs, which are outlined in the agency's 2012 *Federal Advisory Committee Handbook* developed by the Office of Resources, Operations and Management (OROM). Designated Federal Officers (DFOs) are the primary EPA representatives who manage FAC activities. The *Federal Advisory Committee Handbook* states that DFOs are responsible for working closely with EPA program officials to obtain and track responses to FAC recommendations. OROM and the agency's Committee Management Officer provide training to DFOs, but training materials do not highlight the importance of DFOs publishing responses online or tracking the status of FAC recommendations.

Science plays an integral role in the EPA's mission. The EPA has an adequate system of controls to manage recommendations from its science and research federal advisory committees.

Overall, we found the EPA's system of controls to manage the recommendations and advice from S&R FACs to be effective. We determined effectiveness by assessing whether (1) the agency responded to each FAC product we reviewed, including detailing how it would address any recommendations; (2) the agency tracked the status of each FAC recommendation; and (3) the FAC chairs expressed satisfaction with how the agency utilizes and manages the FACs. The EPA provided direct responses to 10 of 13 FAC products in our review sample and posted these responses online. The agency could improve transparency by posting all responses online. The three products that did not receive direct responses from the agency were addressed at the program office level. The agency addressed each recommendation in all 13 products. However, we found that program offices typically track the status of recommendations, rather than the DFOs. In addition, while FAC chairs were generally satisfied with the agency's management of their committees, several noted suggestions to improve the membership and meeting processes.

Recommendations and Planned Agency Corrective Actions

To strengthen the agency's system of controls and improve public transparency, we recommend the Office of Administration and Resources Management (which houses OROM) update the *Federal Advisory Committee Handbook* to direct DFOs to keep FAC websites current with all agency responses, and to track the status of FAC recommendations; direct the FAC Division's Directors or their designees to collect feedback from FAC chairs on a regular basis; and update the FAC training materials as applicable. The agency agreed with all recommendations, and corrective actions are pending or have been completed.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

March 13, 2017

MEMORANDUM

SUBJECT: EPA Has Adequate Controls to Manage Advice From Science and Research
Federal Advisory Committees, but Transparency Could Be Improved
Report No. 17-P-0124

FROM: Arthur A. Elkins Jr.

A handwritten signature in cursive script, reading "Arthur A. Elkins Jr.", written in dark ink.

TO: Donna Vizian, Acting Assistant Administrator
Office of Administration and Resources Management

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this evaluation was OPE-FY16-0024. This report contains findings the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

In accordance with EPA Manual 2750, your office provided planned corrective actions in response to our recommendations. All recommendations are considered resolved. You are not required to provide a written response to this final report because you provided agreed-to corrective actions and planned completion dates for the report recommendations. The OIG may make periodic inquiries on your progress in implementing these corrective actions. Please update the EPA's Management Audit Tracking System as you complete planned corrective actions. Should you choose to provide a final response, we will post your response on the OIG's public website, along with our memorandum commenting on your response. You should provide your response as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

Table of Contents

Reasons for Review	1
Background.....	1
The Federal Advisory Committee Act	1
EPA's S&R FACs	1
EPA's Management of FACs	2
FAC Products and Public Access	3
Federal Internal Control Standards	4
Responsible Offices	5
Scope and Methodology	5
Limitations	6
Results of Review	6
EPA's System of Controls Are Effective.....	7
(1) EPA Addressed All Sample Products.....	7
(2) EPA Tracked All Recommendations	9
(3) FAC Chairs Satisfied but Identified Areas for Improvement	9
Conclusion	10
Recommendations.....	11
Agency Response and OIG Evaluation	11
Status of Recommendations and Potential Monetary Benefits	12

Appendices

A Agency Response to Draft Report.....	13
B Distribution	16

Reasons for Review

We conducted this evaluation to determine what system(s) of controls the U.S. Environmental Protection Agency (EPA) has in place to engage with and manage the recommendations and advice from its science and research (S&R) federal advisory committees (FACs) and whether this system of controls is effective.

Background

The Federal Advisory Committee Act

Congress passed the Federal Advisory Committee Act (FACA), 5 U.S.C., Appendix 2, in 1972 (as amended), to create an orderly procedure by which federal agencies may seek collective advice from FACs. The act ensures that FACs are governed via uniform standards and procedures. Further, according to the EPA, FACA establishes procedures for the management of FACs, ensures FAC decision-making is transparent, and ensures representation on FACs is balanced. FACA states that FACs should be only advisory in nature and that all matters should ultimately be determined in accordance with the law by the official, agency or officer involved. FACA also requires that agencies maintain systematic information on operations of FACs within their jurisdiction.

A FAC is any committee, board, commission, council, conference, panel, task force or other similar group (including any subcommittee or other subgroup thereof) that is established or utilized by the federal government to obtain advice or recommendations and that is not composed solely of full-time or permanent part-time federal officers or employees.

The U.S. General Services Administration (GSA) is responsible for overseeing FACA, as well as for developing regulations and guidance to govern the management and consistent use of FACs across the government. Agencies should establish guidelines and management controls for FACs. FACA stipulates that agencies must submit an annual report detailing the FACs' activities for the previous fiscal year. With this information, the GSA has created and maintains a FACA Database¹ as a repository of data about the FACs' current fiscal year events and performance. This database includes a feature that tracks the number of FAC recommendations and whether they have been implemented.

EPA's S&R FACs

FACs are an important tool within the EPA for building consensus and providing input and recommendations from the agency's diverse customers, partners and stakeholders. As of February 2016, the EPA managed 22 FACs that assisted the

¹ To access the GSA FACA Database and FAC recommendations by federal agency, see <http://www.facadatabase.gov/default.aspx>.

agency in carrying out its mission to protect human health and the environment. The agency provides financial and administrative support for these FACs. Each FAC charter contains key information, including the committee's objectives and scope of activity. From the most recent charters available, we identified eight FACs that provide S&R advice and recommendations to the EPA. Table 1 lists these FACs, along with their managing agency program offices and estimated annual costs. Based on fiscal year (FY) 2015 data, the total estimated annual operating costs for the eight S&R FACs is more than \$8 million.

Table 1: S&R FACs at the EPA

	FAC name	Managing program office	Annual cost (estimated)
1	Board of Scientific Counselors (BOSC)	Office of Research and Development	\$628,000
2	Chemical Safety Advisory Committee (CSAC)	Office of Chemical Safety and Pollution Prevention	434,000
3	Children's Health Protection Advisory Committee (CHPAC)	Office of the Administrator's Office of Children's Health Protection	395,000
4	Clean Air Scientific Advisory Committee (CASAC)	Office of the Administrator's Science Advisory Board Office	1,500,000
5	Environmental Laboratory Advisory Board (ELAB)	Office of Research and Development	45,000
6	Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP)	Office of Chemical Safety and Pollution Prevention	1,940,000
7	Human Studies Review Board (HSRB)	Office of Research and Development's Office of the Science Advisor	150,000
8	Science Advisory Board (SAB)	Office of the Administrator's Science Advisory Board Office	3,000,000
Annual S&R FAC costs (estimated)			\$8,092,000

Source: Office of Inspector General (OIG) summary of information in individual FAC charters.

EPA's Management of FACs

Within the EPA, the Office of Resources, Operations and Management (OROM) provides oversight for the establishment and operation of the agency's FACs. In 2012, OROM developed the *Federal Advisory Committee Handbook* (commonly referred to as the *FACA Handbook*), an agencywide guidance document that outlines processes for managing FACs. The EPA's policies and procedures relating to FACs are codified in the agency's *FACA Handbook*.

The *FACA Handbook* identifies the EPA staff responsible for managing and addressing the recommendations of the agency's FACs:

- *Designated Federal Officers (DFOs)* work with the FAC chairs, FAC members and appropriate staff as the primary managers and record keepers of the FACs. DFOs are also responsible for working closely with the EPA program officials to obtain timely responses to and track responses to FAC recommendations.
- The *Committee Management Officer (CMO)*, who is appointed by the Director of OROM, serves as a resource for DFOs and ensures proper record keeping for FACs.
- The *relevant program office* supports the DFO as required, including providing charge questions to the FAC and determining when the FAC is no longer needed.
- *Senior management*² in the relevant program offices is responsible for preparing a “prompt response to advisory committee recommendations relating to EPA’s proposals for action, or reasons for inaction, or important developments and significant actions, etc.”

FAC Products and Public Access

All FAC meetings are open to the public unless otherwise determined in advance by the EPA Administrator. FAC meetings can result in various products (Table 2). The S&R FACs in our review created 84 products from FY 2013 through FY 2015.

Table 2: FAC products and definitions

FAC products	EPA <i>FACA Handbook</i> definitions
Meeting Minutes Reports	Reports comprising the meeting minutes recorded, the recommendations issued, the decisions made, and the ideas expressed.
Consultations	Early, low-cost endeavors to obtain individual member views on issues for which the EPA has not yet developed a plan of action. No intent or expectation that a consultation will result in a report or specific recommendation.
Commentaries	Thoughts from committee members that the committee believes are important enough to be conveyed to the Administrator and the public. Often presented in the form of a letter.
Peer Review Reports	Independent reviews of near-final EPA work products that are the result of several committee meetings where the EPA presented information, the public commented, and the committee discussed the presented issues.

² Senior managers at the EPA include program office Assistant Administrators, Regional Administrators and Associate Administrators (or equivalents).

FAC products	EPA FACA Handbook definitions
Advisories	Documents that are similar to Peer Review Reports but that are developed while the EPA still has flexibility regarding its plans to close out the discussed project. Can also be a “midcourse” review that provides suggestions on how to proceed with a preexisting project.
Recommendation Letters	Documents that relate to whatever segment of a multi-segment project the committee is working on. Usually presented in the form of a letter to the Administrator.
Committee Reports	Formal summaries of the findings of the committee. Includes advice the committee gives the agency and the findings or decisions made during committee meetings.

Source: OIG summary of the EPA's 2012 *FACA Handbook*.

The *FACA Handbook* recommends that documents³ provided to or prepared by each FAC should be placed in the official committee file. The *FACA Handbook* requires that this file be available for public inspection and copying.

In addition to the *FACA Handbook*, DFOs can also consult the agency's *Peer Review Handbook*,⁴ which includes a section on peer review by FACs. The EPA utilizes the peer review process to “identify any technical problems or unresolved issues in a preliminary (or draft) work product through the use of independent experts.” The *Peer Review Handbook* notes that FACA requirements for advanced notification of committee meetings and opportunities for public participation add to the time required to complete the review but enhance the transparency of the peer review process.

According to the EPA's Scientific Integrity Policy, in order to ensure transparency, the agency needs to allow the “free flow of scientific information.” The Scientific Integrity Policy is the framework to ensure integrity throughout the agency, including FACs, and states that the EPA needs to promote and provide access to the public by making scientific information available online.

Federal Internal Control Standards

In addition to congressional, GSA and EPA mandates that specifically pertain to FACs, the agency must also comply with federal internal control standards as applicable, including the following standards:

- U.S. Government Accountability Office (GAO), *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014: These standards define internal control as “a process effected by an entity's oversight body, management, and other personnel that provides

³ EPA documents that are exempted from public review under FACA, such as privileged or confidential documents, shall be placed in a separate file.

⁴ EPA, *Science and Technology Policy Council Peer Review Handbook*, 4th edition, October 2015.

reasonable assurance that the objectives of an entity will be achieved.” Internal control comprises the plans, methods, policies and procedures used to fulfill the goals and objectives of the entity. GAO’s standards require documentation of agency activities, which provides a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel, as well as a means to communicate that knowledge as needed to external parties. The standards also require that the EPA promptly resolve the findings of audits and other reviews.

- Office of Management and Budget (OMB) Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, July 15, 2016: This document states that the agency’s management is responsible for developing and maintaining effective internal control.

Responsible Offices

The Office of Resources, Operations and Management, within the Office of Administration and Resources Management, has primary responsibility for subjects covered in this review.

Scope and Methodology

We conducted our work from June 2016 through February 2017. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We met with DFOs and key OROM staff to identify the system of controls the EPA has in place to engage with and manage FACs. We met with the FAC chairs (or their equivalents) to determine how satisfied they were with the EPA’s FAC management and to identify best practices and suggestions for improvement.

Of the 84 products created by the FACs in our review from FY 2013 through FY 2015, we randomly selected and analyzed two products from each FAC,⁵ for a total of 13 products. Using internal control standards discussed in the “Federal Internal Control Standards” section above, we determined whether (1) the EPA directly responded to the FACs about each product, (2) the responses were published online on the public FAC websites, (3) the responses described if

⁵ We sampled two products from each S&R FAC with the exception of BOSC and CSAC, which only developed one product and zero products, respectively, during the sampling timeframe. Therefore, our random sample totaled 13 products.

and/or how the EPA will address the FAC recommendations, and (4) the DFO and/or the program office tracked the status of recommendations.

Additionally, we reviewed the following guidance documents, prior reports and online sources:

- ☐ FACA, 5 U.S.C. Appendix 2, 1972 (as amended).
- ☐ GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.
- ☐ OMB Circular No. A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, July 15, 2016.
- ☐ GSA FACA Database and Draft DFO Help Manual.
- ☐ EPA FAC charters,⁶ 2012 *FACA Handbook*, and annual call memorandum to program offices for SAB and other FAC information.
- ☐ EPA, *Science and Technology Policy Council Peer Review Handbook*, 4th edition, October 2015.
- ☐ EPA OIG, 16-P-0246, *EPA Cannot Assess Results and Benefits of Its Environmental Education Program*, July 29, 2016.⁷
- ☐ EPA FAC public websites.

Limitations

We determined that the GSA FACA Database should not be used to help accomplish our objectives or be included as part of our findings. Our review of the GSA FACA Database, which is outside of the EPA's control, revealed limitations in how the EPA tracked the number and status of FAC recommendations for this database. For example, some DFOs count each FAC product as one recommendation, even though the product may contain multiple recommendations. DFOs also acknowledged that the number of recommendations marked as implemented in the GSA FACA Database is often based on best estimates. Additionally, the GSA FACA Database tracks recommendations made and implemented since the inception of FACA.

Results of Review

Overall, we found that the EPA has an adequate system of controls to engage with and manage the recommendations and advice from the agency's S&R FACs. Our random sample analysis of products created by S&R FACs from FY 2013 through FY 2015 indicated that the controls are effective. The FAC chairs we interviewed

⁶ Charters specify the FACs' missions and general operational characteristics.

⁷ This report scope includes the National Environmental Education Advisory Committee and notes that, although FACA does not require recommendations to be acted upon, "GAO internal control standards require that the findings of audits and other reviews be promptly resolved. As such, the EPA should promptly review and resolve recommendations." The report further notes that resolution does not mean that the EPA must implement the recommendations but that it should have a documented resolution for recommendations.

were generally satisfied with the agency's management of their committees and the agency's responsiveness to the FAC recommendations; however, several FAC chairs noted suggestions for improvement. We also identified areas where the EPA could enhance public transparency regarding how the agency responds to and tracks FAC recommendations.

EPA's System of Controls Are Effective

Consistent with the GAO's and OMB's internal control standards, the EPA has a system of controls to engage with and manage the recommendations and advice from FACs. OROM provides training to new DFOs, usually on an annual basis, and hosts quarterly meetings with DFOs. OROM also advises DFOs and any managers and staff who will be working with FACs to take the FACA training offered by the GSA. OROM's training does not, however, highlight the importance of posting responses online, consistent with the agency's Scientific Integrity Policy for transparency, nor does it highlight the need for the DFO to track the status of FAC recommendations. During interviews, DFOs noted that OROM and the CMO do provide guidance on charter renewal and the committee membership process.

Overall, we found the agency's internal system of controls to manage the recommendations and advice from FACs to be effective. We determined effectiveness by assessing whether (1) the EPA provided a response to FAC products, including information regarding how the agency would address any recommendations made; (2) the status of FAC recommendations was being tracked; and (3) the FAC chairs were satisfied with how the agency engages with and manages committee advice. We reviewed 13 randomly selected products from seven FACs.

(1) EPA Addressed All Sample Products

Our sample review found that the agency directly responded to 10 of the 13 FAC products with information on how the agency will address recommendations. The three remaining FAC products that did not receive direct responses were being addressed at the program office level. All 10 direct responses provided to FACs were posted on the public FAC websites. Table 3 describes the findings from our sample review in more detail.

Table 3: Agency management of selected S&R FAC products

FACA report	Agency provided direct response	Response posted online	Recommendations addressed
BOSC			
Strategic Research Planning for 2016–2019: A Joint Report of the SAB and BOSC (2015)	Yes	Yes	Yes
CASAC			
CASAC Review of the EPA's <i>Integrated Science Assessment for Oxides of Nitrogen—Health Criteria (First External Review Draft—November 2013)</i> (2014)	Yes	Yes	Yes
CASAC Review of the EPA's <i>Second Draft Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards</i> (2014)	Yes	Yes	Yes
CHPAC			
Re: CASAC Review of the Health Risk and Exposure Assessment for Ozone and Policy Assessment for the Review of the Ozone NAAQS: Second External Review Drafts (2014)	N/A ^a	N/A	Yes
Re: Human Health Benchmarks for Pesticides: A Missed Opportunity (2013)	Yes	Yes	Yes
ELAB			
Re: Selected Ion Monitoring (2014)	Yes	Yes	Yes
Recommendations Regarding the State of National Accreditation (2012)	Yes	Yes ^b	Yes
FIFRA SAP			
Integrated Endocrine Bioactivity and Exposure-Based Prioritization and Screening (2015)	No	No	Yes
RNAi Technology as a Pesticide: Problem Formulation for Human Health and Ecological Risk Assessment (2014)	No	No	Yes
HSRB			
April 8–9, 2014 EPA HSRB Meeting Report (2014)	Yes	Yes	Yes
April 22–23, 2015 EPA HSRB Meeting Report (2015)	Yes	Yes	Yes
SAB			
SAB Advice on Advancing the Application of CompTox Research for EPA Chemical Assessments (2014)	Yes	Yes	Yes
SAB Review of the Draft EPA Report <i>Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence</i> (2014)	Yes	Yes	Yes
Summary of Results	10 of 13	10 of 13	13 of 13

Source: OIG analysis based on review of sample FAC products.

^a This CHPAC report was addressed to another FAC (CASAC); as such, an agency response was not required to be sent to CHPAC.

^b During the course of our review, the agency response to the second ELAB report was unavailable. In the agency's comments on our draft report, the link to the response was provided. We updated the final report with the agency's information.

As shown in Table 3, three FAC products (one CHPAC product and two FIFRA SAP products) did not receive direct responses from the agency. The Office of Chemical Safety and Pollution Prevention's Office of Pesticide Programs and the Office of Science Coordination and Policy are the lead offices responsible for providing responses to the FIFRA SAP recommendations. While these program offices did not provide responses directly to FIFRA SAP for the two reports reviewed, they developed tables with information on how the agency has

addressed or is addressing the recommendations. The CHPAC report that did not receive a direct response was addressed to another advisory committee and therefore did not require a response from the agency.

The EPA could improve transparency by providing direct responses to all FAC products. In addition, all agency responses should be published online, consistent with the EPA's Scientific Integrity Policy. For example, during the course of this review, the ELAB DFO already indicated plans to revise ELAB's website to post agency responses adjacent to committee products.

The EPA's Scientific Integrity Policy promotes access to scientific information by making it available online in open formats and in a timely manner. The EPA's posting of FAC products and the agency's response to FAC recommendations align with this policy.

(2) EPA Tracked All Recommendations

Each of the FAC recommendations in our sample has either been addressed and does not require further tracking or is being tracked by the program office. For example, the Office of Pesticide Programs and the Office of Science Coordination and Policy have developed tables detailing how the agency addresses each FAC recommendation within their purview.

Although program offices typically track the status of any agreed-upon actions, this information is not typically shared with the DFOs. The DFOs are supposed to act as a liaison between the public, the FACs and the EPA; however, some DFOs directed us to the program offices for the status of the recommendations.⁸ While we were able to determine the status of recommendations from the program offices, it took time to receive this information from the EPA staff responsible for providing it. Accessing documents from program offices would likely be a more difficult process for the general public.

To allow for easy public access to the status of agreed-upon recommendations, DFOs could work closely with program officials to obtain updates to track the status of FAC recommendations. For example, the BOSC DFO has stated they are in the process of creating a spreadsheet for this purpose.

(3) FAC Chairs Satisfied but Identified Areas for Improvement

Overall, the FAC chairs we interviewed as part of our review expressed satisfaction with the management of their committees and the work of the DFOs. FAC chairs are satisfied with how the agency utilizes their FACs and with how the agency responds to their committees' advice, even when a response is not always expected. While some FAC chairs said charge questions come directly from the agency with no input from their committees, others said their committees can and do provide unsolicited advice and take a more proactive role in

⁸ The ELAB FAC DFO does track the status of the committee's recommendations.

developing new charge questions. FAC chairs identified the following suggestions to improve the management of FAC membership and meeting processes:

1. Allow FAC chairs to provide input into committee member selection to ensure necessary expertise.
2. Ensure each FAC has a core of permanent panel members who attend all meetings to provide perspective and help direct the efforts of ad hoc members. Cultivate leadership of the permanent FAC panel members and chairs.
3. Clarify the policy context of the charge questions and/or how the recommendations are going to be utilized so that the FAC can provide more constructive advice to the agency.
4. Provide the FACs with sufficient background material prior to all meetings so they can be more prepared to provide advice to the agency, particularly in cases where the agency is meeting with the committee to discuss broader topics.
5. Specify procedures for how the committee should develop conclusions, whether or not consensus is required.
6. Differentiate recommendations from suggestions, with the expectation that all recommendations require agency response but suggestions do not necessarily require a response. More significant recommendations could be further classified as “strong,” or the committee could prioritize recommendations in list form to help facilitate implementation.

Conclusion

Overall, we found the EPA’s system of controls to manage the recommendations and advice from S&R FACs to be effective. However, based on our review, we identified areas where the agency can strengthen its controls with regard to transparency and tracking the status of FAC recommendations. Providing direct responses to all FAC products and posting all agency responses online are two ways the EPA could improve transparency and also promote public access to agency activities. In addition, to allow for easy access to the status of recommendations, DFOs should be responsible for working closely with program offices to track the status of FAC recommendations. The agency can also improve its management of FACs by soliciting feedback from the FAC chairs.

Recommendations

To strengthen and reinforce the EPA's system of controls for managing the recommendations and advice from federal advisory committees and to improve transparency, we recommend that the Assistant Administrator for Administration and Resources Management:

1. Update the EPA's *Federal Advisory Committee Handbook* to:
 - a. Direct Designated Federal Officers to maintain and keep the federal advisory committee websites current, work closely with program officials to provide a direct response to each federal advisory committee product with information on how the recommendations will be addressed, and make EPA responses publicly available as soon as possible.
 - b. Direct Designated Federal Officers to work closely with other EPA program officials to track the status of federal advisory committee recommendations, to promote ease of public accessibility.
 - c. Direct the Federal Advisory Committee Management Division's Director or his/her designee to collect feedback from active federal advisory committee chairs on a regular basis to identify ways to improve the utilization and management of federal advisory committees.
2. Update the Designated Federal Officer training materials and incorporate into the annual training that Designated Federal Officers are responsible for maintaining federal advisory committee websites with current agency responses and for working closely with other EPA program officials to track the status of federal advisory committee recommendations.

Agency Response and OIG Evaluation

The EPA agreed with our recommendations. The agency provided acceptable corrective actions for Recommendations 1.a through 1.c and has completed corrective actions for Recommendation 2. The agency also provided technical comments on the draft report. Where appropriate, we incorporated changes to the report based on the agency's technical comments. Appendix A contains the agency's full response.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	11	<p>Update the EPA's <i>Federal Advisory Committee Handbook</i> to:</p> <ul style="list-style-type: none"> a. Direct Designated Federal Officers to maintain and keep the federal advisory committee websites current, work closely with program officials to provide a direct response to each federal advisory committee product with information on how the recommendations will be addressed, and make EPA responses publicly available as soon as possible. b. Direct Designated Federal Officers to work closely with other EPA program officials to track the status of federal advisory committee recommendations, to promote ease of public accessibility. c. Direct the Federal Advisory Committee Management Division's Director or his/her designee to collect feedback from active federal advisory committee chairs on a regular basis to identify ways to improve the utilization and management of federal advisory committees. 	R	Assistant Administrator for Administration and Resources Management	12/31/17	
2	11	Update the Designated Federal Officer training materials and incorporate into the annual training that Designated Federal Officers are responsible for maintaining federal advisory committee websites with current agency responses and for working closely with other EPA program officials to track the status of federal advisory committee recommendations.	C	Assistant Administrator for Administration and Resources Management	2/2/17	

¹ C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

Agency Response to Draft Report



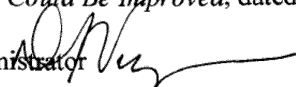
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 10 2017

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OPE-FY16-0024
EPA Has Adequate Controls to Manage Advice From Science and Research Federal Advisory Committees, but Transparency Could Be Improved, dated January 10, 2017

FROM: Donna J. Vizian, Acting Assistant Administrator 

TO: Arthur A. Elkins, Jr., Inspector General
Office of Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject draft report. Attachment One is a summary of the agency's overall position and its position on each of the report recommendations. Attachment Two contains the three technical comments on the report.

The Office of Administration and Resources Management believes the findings in the draft report are fair and accurate and is pleased that the Office of Inspector General has found that the system of controls to manage the recommendations and advice from federal advisory committees to be effective. The OARM agrees with the recommendations and have provided high-level intended corrective actions and estimated completion dates in response to each of the recommendations. In addition, the OARM will advise the agency's Designated Federal Officers about the recommendations and corrective actions at its quarterly DFO network meetings.

As agreed with Erin Barnes-Weaver, OIG Project Manager, the recommendations from the OIG draft report have been revised as follows: 1) recommendations one, two, and three from the draft report have been combined into one recommendation, 2) recommendation 1.a. has been modified to clarify the role of program officials in providing responses to FAC products, and 3) the language in recommendation two has been corrected so that it aligns with recommendation 1.b.

If you have any questions regarding this response, please have your staff contact Monisha Harris, director, Federal Advisory Committee Management Division, at (202) 564-0563.

Attachments

cc: John Reeder
Chris Robbins
John Showman
Louise P. Wise
Lynnann Hitchens
Michael Hardy
Monisha Harris
Megan Moreau
Lauren Lemley

AGENCY'S RESPONSE TO REPORT RECOMMENDATIONS

No.	Recommendations	High-Level Intended Corrective Action(s)	Estimated Completion Date
1.	<p>Update the EPA's Federal Advisory Committee Handbook to:</p> <ul style="list-style-type: none"> a. Direct the Designated Federal Officers to maintain and keep the federal advisory committee websites current, work closely with program officials to provide a direct response to each FAC product with information on how the recommendations will be addressed, and make the EPA responses publicly available as soon as possible. b. Direct the DFOs to work closely with other EPA program officials to track the status of the FAC recommendations, to promote ease of public accessibility. c. Direct the FAC management division director's or his/her designee to collect feedback from active FAC chairs on a regular basis to identify ways to improve the utilization and management of the FACs. 	The Office of Administration and Resources Management agrees with this recommendation. The OARM will update the EPA federal advisory committee handbook to codify these requirements.	December 31, 2017
2.	Update the Designated Federal Officer training materials and incorporate into the annual training that the DFOs are responsible for maintaining the FAC's websites with current agency responses and for working closely with other EPA program officials to track the status of the FAC recommendations.	The OARM agrees with this recommendation and has updated the training materials to incorporate the recommended actions.	Completed

Distribution

The Administrator
Assistant Administrator for Administration and Resources Management
Agency Follow-Up Official (the CFO)
Agency Follow-Up Coordinator
General Counsel
Associate Administrator for Congressional and Intergovernmental Relations
Associate Administrator for Public Affairs
Deputy Assistant Administrator for Administration and Resources Management
Director, Office of Resources, Operations and Management, Office of Administration and
Resources Management
Deputy Director, Office of Resources, Operations and Management, Office of Administration
and Resources Management
Audit Follow-Up Coordinator, Office of the Administrator
Audit Follow-Up Coordinator, Office of Administration and Resources Management
Audit Follow-Up Coordinator, Office of Air and Radiation
Audit Follow-Up Coordinator, Office of Chemical Safety and Pollution Prevention
Audit Follow-Up Coordinator, Office of Research and Development

To: Schnare, David[schnare.david@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]
From: Shapiro, Mike
Sent: Thur 3/9/2017 3:07:04 AM
Subject: Contractor Qualifications to Manage the Lead Modelling Peer Review

David,

You asked for information about ERG's qualifications to manage a major peer review. The paragraphs below are from ERG's discussion of their corporate and staff qualifications to manage the lead modelling peer review:

For OGWDW's Task Order, the two key staff are Jan Connery (for senior management, workshop facilitation, peer review summary report, and quality control) and Laurie Waite (task order management and coordination). Ms. Connery founded ERG's peer review practice in 1984 and has managed all of ERG's peer review contracts with NCEA since then, including the current contract. She has written dozens of peer review summary reports and facilitated dozens of EPA peer review workshops, including many on highly visible/controversial/contentious topics with numerous concerned stakeholders. Ms. Waite has been the primary task order manager for NCEA peer reviews at ERG since 2000. Over the past 16 years, she has successfully managed and coordinated hundreds of letter peer reviews for NCEA, as well as EPA's Office of Water (OW), ATSDR, OSHA, and NHTSA. In this role, she manages and coordinates each step of the peer review process.

Since 1984, ERG has organized well over a hundred in-person peer review panel meetings for EPA. Ms. Connery has served as the ERG facilitator (and the manager responsible for the development and quality control of the meeting report) for almost all these meetings. Ms. Waite has served as task order manager for most of the EPA in-person panel meetings ERG has organized for EPA since 2000.

ERG has managed the download from EPA's docket, compilation, and distribution of public comments to external reviewers for dozens of EPA peer review workshops for which EPA solicited written public comments on the document being reviewed. Many of these were for IRIS assessments. In addition, ERG has extensive experience providing support for managing, documenting, summarizing, and responding to public comments for EPA regulatory actions.

Please let us know if you need more information. As I noted in my earlier message, we are anxious to get this work going since it is a key step in our path to improving our approach to managing lead in drinking water. Thanks.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Schnare, David[schnare.david@epa.gov]
From: Hull, George
Sent: Wed 3/15/2017 6:56:53 PM
Subject: RE: Resignation

David,

Its been a pleasure to work with you. My best wishes as you move on to other challenges. -
George

From: Schnare, David
Sent: Wednesday, March 15, 2017 2:41 PM
To: 2017CareerTransitionLeaders <2017CareerTransitionLeaders@epa.gov>;
2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants
<2017Regionfirstassistants@epa.gov>
Cc: Willis, Sharnett <Willis.Sharnett@epa.gov>; Brazauskas, Joseph
<Joseph.Brazauskas@mail.house.gov>; [REDACTED] **EOP/Ex. 6** Catanzaro, Michael J.
[REDACTED] **EOP/Ex. 6** Bremberg, Andrew P. EOP/WHO
[REDACTED] **EOP/Ex. 6**; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Resignation

Dear colleagues:

Transitions begin and they end. I have been honored to have had the opportunity to serve the Trump Administration, but I have completed as much as I am able. Thus it is time for me to move on.

I will resign effective COB Friday and will be on leave until then.

My contact information for any who wish to remain in touch

Personal Email/Ex. 6

Personal Phone/Ex. 6

Personal Phone/Ex. 6

I wish each of you the best.

David W. Schnare

Assistant Deputy Administrator

US. EPA

From: Flynn, Mike
Location: WJC-N 3415
Importance: Normal
Subject: Hot Issues Check-in
Categories: Record Saved - Shared
Start Date/Time: Tue 3/14/2017 7:00:00 PM
End Date/Time: Tue 3/14/2017 7:30:00 PM

Non-responsive Conference Code/Ex.6

To: Schnare, David[schnare.david@epa.gov]
Cc: Sharma, Prianka P.[Prianka.Sharma@sba.gov]
From: Bromberg, Kevin L.
Sent: Mon 3/13/2017 7:41:53 PM
Subject: RE: The Future of Environmental Law Under the Trump Administration (Webinar)

thx

-----Original Message-----

From: Sharma, Prianka P.
Sent: Monday, March 13, 2017 3:17 PM
To: Bromberg, Kevin L.
Subject: FW: The Future of Environmental Law Under the Trump Administration (Webinar)

-----Original Message-----

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Monday, March 13, 2017 3:13 PM
To: Sharma, Prianka P.
Subject: Re: The Future of Environmental Law Under the Trump Administration (Webinar)

Yes

Sent from my iPhone

> On Mar 13, 2017, at 3:06 PM, Sharma, Prianka P. <Prianka.Sharma@sba.gov> wrote:

>

> Is this still on?

>

> -----Original Appointment-----

> From: Sharma, Prianka P.

> Sent: Thursday, March 09, 2017 1:43 PM

> To: Sharma, Prianka P.; Bromberg, Kevin L.; Waqar, Tayyaba; Rostker, David J.; Fekete, Stephanie P.; Maresca, Charles A.; Porat, Jonathan; McManus, Michael J.

> Subject: FW: The Future of Environmental Law Under the Trump Administration (Webinar)

> When: Monday, March 13, 2017 5:30 PM-7:30 PM (UTC-05:00) Eastern Time (US & Canada).

> Where: Advo Conference Room

>

>

> Kevin-

>

> Do you still want to do this with the supposed impending weather? I have the call-in information, so perhaps we may be able to call-in individually?

>

> Best,

> Prianka

>

> -----Original Appointment-----

> From: Sharma, Prianka P.

> Sent: Thursday, March 09, 2017 1:43 PM

> To: Sharma, Prianka P.; Bromberg, Kevin L.; Waqar, Tayyaba; Rostker, David J.; Fekete, Stephanie P.; Maresca, Charles A.; Porat, Jonathan; McManus, Michael J.

> Subject: The Future of Environmental Law Under the Trump

> Administration (Webinar)

> When: Monday, March 13, 2017 5:30 PM-7:30 PM (UTC-05:00) Eastern Time (US & Canada).
> Where: Advo Conference Room
>
>
> Program Overview:
>
> Dr. David Schnare, who was part of President-elect Trump's EPA Transition Landing Team, headlines a distinguished panel of experts to discuss the Trump Administration's environmental law agenda at an EBA Energizer on March 13 from 5:30pm to 7:30pm at Hogan Lovells US LLP in Washington, DC. Panelists will focus particularly on the impact of environmental laws on the energy sector. Rep. Dr. Schnare will be joined by Matt Kellogg, senior policy advisor and counsel to U.S. House Majority Leader Kevin McCarthy, and Richard Alonso, a partner with Bracewell LLP. Justin Savage, a partner with Hogan Lovells will moderate the event. This program is presented by the EBA's Environmental Regulation Committee.
>
> Thanks to our Sponsor:
> Hosted By: Hogan Lovells US LLP
>
> Moderator:
> Justin Savage, Partner, Hogan Lovells US LLP
>
> Panelists:
> Richard Alonso, Partner, Bracewell LLP Matthew Kellogg, Senior Policy
> Advisor & Counsel, House Majority Leader Kevin McCarthy, U.S. House of
> Representatives Dr. David Schnare, Esq., Ph.D, Environmental
> Protection Agency (EPA) Transition Team and Landing Team <meeting.ics>

To: Dravis, Samantha[dravis.samantha@epa.gov]; Kenny, Shannon[Kenny.Shannon@epa.gov]
Cc: Reeder, John[Reeder.John@epa.gov]; Schnare, David[schnare.david@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Anderson, Denise[anderson.denise@epa.gov]; Dickerson, Aaron[dickerson.aaron@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]
From: Flynn, Mike
Sent: Tue 3/7/2017 5:11:26 PM
Subject: List of Requested Briefings
[Priority Briefings.docx](#)

Hi Samantha,

As you know, there are numerous briefings for the Administrator that have been requested by the program offices, that Ryan has asked to set up, or may have been mentioned in the program office briefings for the Administrator (a couple of which you attended). To help Ryan and the scheduling team, I had folks put together a list of the requested briefings (attached). The first group are the ones that seem to be the most urgent. We've gone over this with Michelle and wanted to get your and your team's input before sharing with Ryan. I'd like to share with Ryan later today so he can confirm which meetings he would like to be scheduled with the Administrator in the short term.

This is just to jump start getting key meetings on the calendar for the Administrator. I realize more discussions with Ryan will be needed going forward to make sure we have a smooth process with everyone involved who needs to be.

Thanks for your help.

Mike

Mike Flynn

Acting Deputy Administrator

U.S. Environmental Protection Agency

202-564-4711

ADMINISTRATOR PRIORITY REQUESTED BRIEFINGS

GROUP 1:

	OFFICE Lead/Support	SUBJECT
1.	OCSPP	Food Tolerance for Pesticide Chlorpyrifos
2.	OCSPP	TSCA Framework Rules
3.	OLEM	CCR Solid Waste Plan Approvals
4.	OAR	RFS Volume Rule
5.	ORD/OW	Perfluorinated Compounds (PFOA, PFOS)
6.	OW/R2	Puerto Rico State Revolving Fund
7.	OW	WOTUS Next Steps
8.	OW/OECA/R5	East Chicago Options for SDWA 1431 Petition
9.	OW/OGC	Pebble Mine Follow-up
10.	OW	Water Infrastructure

GROUP 2:

	OFFICE Lead/Support t	SUBJECT
11.	AO-OCR	EEO and Anti-Harassment Report
12.	OAR	RFS Reid Vapor Pressure-E15
13.	OAR	Cars/Light Trucks Next Steps
14.	OECA	Enforcement Consent Decrees – Tiering Criteria/Process
15.	OITA	Tribal Jurisdictional Issues (TAS)/Tribal Infrastructure Needs
16.	OCSPP/ORD	New Chemical Reviews
17.	OLEM/OECA	Superfund Sites (Portland Harbor, Westlake Landfill, Tar Creek)
18.	OECA	Cases (Flint, Ameren, Colorado Springs, VW, Fiat)
19.	OECA	National Enforcement Initiatives/Environmental Justice

To: Schnare, David[schnare.david@epa.gov]
From: Kaplan, Robert
Sent: Wed 3/15/2017 6:50:54 PM
Subject: RE: Resignation

David,

This is most unfortunate. I'm very sorry to hear this news – personally and professionally. I'd like to chat with you if you're open to it.

I enjoyed working with you at DOJ, and the same holds true for this brief time period.

- Bob

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Cell: Personal Phone/Ex. 6

Direct: 312-886-1499

Main: 312- 886-3000

From: Schnare, David
Sent: Wednesday, March 15, 2017 1:41 PM
To: 2017CareerTransitionLeaders <2017CareerTransitionLeaders@epa.gov>;
2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants
<2017Regionfirstassistants@epa.gov>
Cc: Willis, Sharnett <Willis.Sharnett@epa.gov>; Brazauskas, Joseph
<Joseph.Brazauskas@mail.house.gov>; john.k.mashburn(EOP/Ex. 6) Catanzaro, Michael J.
(EOP/Ex. 6), Bremberg, Andrew P. EOP/WHO
(EOP/Ex. 6) Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Resignation

Dear colleagues:

Transitions begin and they end. I have been honored to have had the opportunity to serve the Trump Administration, but I have completed as much as I am able. Thus it is time for me to move on.

I will resign effective COB Friday and will be on leave until then.

My contact information for any who wish to remain in touch:

Personal Phone/Ex. 6

Personal Email/Ex. 6

Personal Phone/Ex. 6

I wish each of you the best.

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Benton, Donald[benton.donald@epa.gov]; Schnare, David[schnare.david@epa.gov]
Cc: Campau, Anthony P. EOP/OMB [EOP/Ex. 6]
From: Williams, Michael B. EOP/OMB
Sent: Wed 3/1/2017 11:55:04 PM
Subject: RE: Regulatory Review Update

Can't do 2pm tomorrow. Free Friday at 2pm?

From: Benton, Donald [mailto:benton.donald@epa.gov]
Sent: Wednesday, March 1, 2017 5:13 PM
To: Williams, Michael B. EOP/OMB [EOP/Ex. 6]; Schnare, David <schnare.david@epa.gov>
Cc: Campau, Anthony P. EOP/OMB [EOP/Ex. 6]
Subject: RE: Regulatory Review Update

I am hoping David is available for a 2pm tomorrow. We will confirm at 9:30am.

Will you be available?

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Williams, Michael B. EOP/OMB [EOP/Ex. 6]
Sent: Tuesday, February 28, 2017 6:11 PM
To: Schnare, David <schnare.david@epa.gov>; Benton, Donald <benton.donald@epa.gov>
Cc: Campau, Anthony [EOP/Ex. 6]

Subject: Regulatory Review Update

David and Don,

Thanks so much for your work on the pending regulations list you sent last week. Do you have time this week to jump on a call with Anthony and me to discuss your comments and recommended actions?

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Feel free to include any other relevant members of your team.

Best,

Michael

Michael B. Williams

Legal

Office of Management and Budget

EOP/Ex. 6

To: David Schnare[Schnare.David@epamail.epa.gov]
From: DCOGCLN1/DC/USEPA/US
Sent: Wed 3/1/2017 8:01:02 AM
Subject: Gentle reminder from OGC/Ethics: Any transactions to report?

---- This is your gentle reminder from OGC/Ethics: Do you have a periodic transaction to report?? ----

Dear 278 Filer –

Because you file the OGE 278e, you are also required to file periodic transaction reports using the OGE 278T using INTEGRITY, the new online financial disclosure system created and maintained by the Office of Government Ethics Non-responsive Internal URL/Ex. 6. You must file a periodic transaction report when you purchase, sell, or exchange certain investments like stocks, bonds, commodities futures, options or other forms of securities if the amount of the transaction exceeds \$1,000. These transactions are reportable even if they occur within brokerage accounts, managed accounts, or other investment vehicles that you own or that are owned by anyone else whose interests are imputed to you (i.e., spouse and/or dependent children).

Please note that not all transactions are reportable on this periodic basis. Don't report transactions of less than \$1000 at a time. And you don't have to file a 278T for transactions involving investments such as mutual funds, exchange traded funds, real estate, or U.S. Treasury notes.

If you have a reportable periodic transaction, then you must file the OGE 278T in INTEGRITY within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs. You can be fined \$200 for any missed periodic report. If you don't have any reportable transactions, then don't submit a negative report. Keep track of your transactions because even if they aren't reportable periodically, they may still be reportable Schedule B of your next annual filing. Also, the INTEGRITY system will allow you to upload your transactions automatically into the appropriate annual report.

For more assistance on INTEGRITY, check out the OGC/Ethics help page at:

Non-responsive Internal URL/Ex. 6

Thanks!

The OGC/Ethics team

To: Schnare, David[schnare.david@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Packard, Elise[Packard.Elise@epa.gov]
From: Minoli, Kevin
Sent: Mon 3/6/2017 8:29:33 PM
Subject: Re: WOTUS

David- I'm looping in Mike and Steve as they are more likely to know when we planned to check in ahead of the briefing for the Administrator. I know I got an update last Thursday as part of my standing weekly with the Water Law Office. If folks were planning to use those channels to brief up we can also set up a time were a small group could meet with you this week. I'm traveling through Wednesday, so ask that it be set for Thursday or Friday.

Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Mar 6, 2017, at 2:23 PM, Schnare, David <schnare.david@epa.gov> wrote:

Is there a huddle planned on this, say on Wednesday?

d.

To: Schnare, David[schnare.david@epa.gov]
Cc: Vizian, Donna[Vizian.Donna@epa.gov]
From: Showman, John
Sent: Mon 3/13/2017 7:22:07 PM
Subject: Follow-up

David – see below from Bruce Binder --- updated link and his phone number if you have any questions ... Donna and I are also available as needed.

John L Showman III, Acting Deputy Assistant Administrator

Office of Administration and Resources Management

US Environmental Protection Agency

202-564-5341

From: Binder, Bruce
Sent: Monday, March 13, 2017 3:00 PM
To: Showman, John <Showman.John@epa.gov>
Cc: Vizian, Donna <Vizian.Donna@epa.gov>; Polk, Denise <Polk.Denise@epa.gov>
Subject: RE: Question

John, here is the link to the most recent version of the document . We can try to convert it to word if you want. Im not sure how but I can find someone who can. Let me know.

Internal URL/Ex. 6

John he can call me at **Personal Phone/Ex. 6**

To: Schnare, David[schnare.david@epa.gov]
From: Fugh, Justina
Sent: Thur 3/9/2017 2:10:42 AM
Subject: reminder about ethics

Hi there,

1) President's Ethics Pledge

As you know, on January 28, 2017, President Donald J. Trump issued an Executive Order on Ethics Commitments for all political appointees in his administration that contains additional restrictions during and after your federal service. You were required to sign this pledge, which you have done (thanks!). Here is a reminder about the significant points of the Executive Order:

If you were a federally registered lobbyist in the previous 2 years --

- ☐ ☐ ☐ ☐ ☐ ☐ ☐ For the next 2 years, you will not participate in any particular matter on which you lobbied within the previous 2 years and you will not participate in the specific issue area in which that particular matter falls.

While you are a federal employee --

- ☐ ☐ ☐ ☐ ☐ ☐ ☐ You cannot accept any gifts from a registered lobbyist, including attendance at a widely attended gathering. There are a few exceptions, so ask an ethics official for guidance, early and often.

- ☐ ☐ ☐ ☐ ☐ ☐ ☐ **For 2 years** from the date of your appointment, you will not participate in any particular matter involving specific parties that is directly and substantially related to your former employer or former client(s), including regulations and contracts; and

- ☐ ☐ ☐ ☐ ☐ ☐ ☐ Any hiring or other employment decisions you make will be based on the candidate's qualifications, competence and experience.

After you leave federal service --

- ☐ ☐ ☐ ☐ ☐ ☐ ☐ For 5 years, you will not engage in any lobbying activities with respect to the

agency in which you were appointed to serve;

- ☐ ☐ ☐ ☐ ☐ ☐ For the remainder of the Administration, you will not engage in lobbying activities with respect to any covered executive branch official or non-career SES employee; and
- ☐ ☐ ☐ ☐ ☐ ☐ For the rest of your life, you will not engage in any activity on behalf of a foreign government or foreign political party as their “agent” requiring registration under the Foreign Agents Registration Act of 1938 and defined at 22 U.S.C. § 611(c) (as those terms were defined as of 1/20/17).

Finally, you agree that the terms of the ethics pledge are binding upon you.

2) Thanks for making progress on your new entrant financial disclosure report, but I notice that we returned it to you for more changes on 2/3/17. PLEASE help us by addressing our questions so that we can certify your report.

3) I did not receive a signed recusal statement for you. Given the ethics pledge, though, I have to revise it anyway to address your firm/clients. So look for that soon.

Cheers,
Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308
North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the
zip code) | phone 202-564-1786 | fax 202-564-1772

To: Schnare, David[schnare.david@epa.gov]
From: Strauss, Alexis
Sent: Wed 3/15/2017 6:43:58 PM
Subject: RE: Resignation

David,

Thank you for the time you've spent with us. I'm sorry we didn't meet in person, but send best wishes for whatever calls you next in your career. You so quickly earned the reputation of being very helpful, we'll miss you. If I can be of any assistance, please call.

Kind regards,

Alexis

Alexis Strauss

Acting Regional Administrator

E.P.A. Region 9

75 Hawthorne Street

San Francisco, CA 94105

Personal Phone/Ex. 6

From: Schnare, David
Sent: Wednesday, March 15, 2017 11:41 AM
To: 2017CareerTransitionLeaders <2017CareerTransitionLeaders@epa.gov>;
2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants
<2017Regionfirstassistants@epa.gov>
Cc: Willis, Sharnett <Willis.Sharnett@epa.gov>; Brazauskas, Joseph
<Joseph.Brazauskas@mail.house.gov>; john.k.mashburn@epa.gov; EOP/Ex. 6 Catanzaro, Michael J.
EOP/Ex. 6 Bremberg, Andrew P. EOP/WHO
EOP/Ex. 6; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Resignation

Dear colleagues:

Transitions begin and they end. I have been honored to have had the opportunity to serve the Trump Administration, but I have completed as much as I am able. Thus it is time for me to move on.

I will resign effective COB Friday and will be on leave until then.

My contact information for any who wish to remain in touch:

Personal Phone/Ex. 6

Personal Email/Ex. 6

Personal Phone/Ex. 6

I wish each of you the best.

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]
From: Alan Carpien
Sent: Tue 3/14/2017 5:48:02 PM
Subject: Trump is poised to issue a sweeping order dismantling Obama's climate plan this week from The Washington Post

From Alan Carpien -- I would hope the positive effects of carbon -- CO2 Coalition -- are taken into account in rule making.

Non-responsive Internal URL/Ex. 6

Sent from my iPad

To: Schnare, David[schnare.david@epa.gov]
From: Kaplan, Robert
Sent: Thur 3/2/2017 9:17:27 PM
Subject: FW: Update on EPA's Budget

David,

Here is the email I sent to Region 5. I received some good feedback on it. As you might imagine, there is substantial anxiety. Just knowing the process will help a lot.

- Bob

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Personal Phone/Ex. 6

Direct: 312-886-1499

Main: 312- 886-3000

From: Kaplan, Robert
Sent: Thursday, March 02, 2017 3:15 PM
Subject: Update on EPA's Budget

Colleagues,

As discussed at the Region 5 All-Hands meeting on January 31, I want to provide you with as much information as I can in these challenging times. With that in mind, I write to provide you with important information about the 2017 and 2018 budgets.

2017. For this year, we are currently under a continuing resolution (CR) through April 28, 2017. The CR funds the government at approximately last year's levels. In effect, this means that whatever we had last year in terms of funding levels have continued on into the first part of 2017. We depend on Congress to fund the government by April 28 through the rest of the fiscal year. To state the obvious, it is not possible to predict what those funding levels will be. In years past, Congress did not make substantial cuts because of the difficulty in implementing such a budget with only a relatively short time before the end of the fiscal year. As always, we are managing our resources -- including payroll and travel -- prudently to prepare for the range of possible outcomes.

2018. You have likely seen news reports about the President's 2018 federal budget. These reports are of concern to all of us, and are causing considerable stress and anxiety. I want to make two points.

First, a word about process. I want to put a "you-are-here" pin on the map. We are at the *start* of a longer budget process for next year that involves many steps. This phase is referred to as "passback," because it's when the Office of Management and Budget "passes back" drafts of proposed budgets for the next fiscal year to agencies. It begins a series of negotiations in advance of a final proposal for the President's 2018 Budget. The next major step will occur on March 16th, when OMB is scheduled to release a "Budget Blueprint" that will outline the total dollars and Full Time Employees for EPA. This will be followed in early May by an even more detailed budget. At that point, the proposed budget gets submitted to Congress. House and Senate subcommittee hearings will then consider that proposal and begin working on -- and debating -- appropriations bills for specific parts of the government, including EPA. Once passed by Congress, and signed by the President, appropriations bills then enact federal agency budgets into law. It is only then that we know what our final budget numbers will be. Let me again state the obvious: at this point, we do not know what will appear in the President's 2018 final budget proposal, and we do not know what will happen upon consideration by Congressional House and Senate Subcommittees. It is a process with many likely changes before a final appropriations bill is passed.

Second, I have been assured that Administrator Pruitt will work hard on our behalf to effectively represent EPA in the budget deliberations. Region 5 along with the other regions and headquarters components are providing important information to support his ability to do so. I know that this information will be useful as EPA and OMB engage in continuing discussions.

Closing thoughts. Region 5 will have another All-hands at the end of March, as we said at the last meeting. Before that time, we will continue to provide you with information through the intranet site and the “Breakfast Club” meetings. It is difficult not to get swept up in the swirl of media. These are uncertain times. What I know is this: we have critical work to do on behalf of the American people. We protect human health and the environment. As I said on January 31, we do it better than anyone. Please know that I will do everything I can to support you, just as I know you will continue to carry out our outstanding work.

Thank you.

- Bob

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Personal Phone/Ex. 6

Direct: 312-886-1499

Main: 312- 886-3000

To: Jackson, Ryan[jackson.ryan@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Schnare, David[schnare.david@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov];

Personal Email/Ex. 6

From: Konkus, John

Sent: Wed 3/1/2017 10:56:59 PM

Subject: WOTUS Clips

WOTUS Clips.docx

Please see attached.

CLEAN WATER RULE

Pruitt vows quick repeal following Trump order

Ariel Wittenberg and Marc Heller, E&E News reporters

Published: Tuesday, February 28, 2017



Lawmakers and U.S. EPA Administrator Scott Pruitt join President Trump at the White House today to sign an order against the Clean Water Rule. Photo courtesy of @NACoTweets via Twitter.

U.S. EPA Administrator Scott Pruitt today vowed to quickly withdraw the Obama administration's contentious Clean Water Rule as President Trump signed an executive order directing the agency to review it.

Speaking to the American Farm Bureau Federation's advocacy conference at National Harbor outside Washington, D.C., this afternoon, Pruitt spoke about joining Trump for the order signing.

"It doesn't end there," Pruitt said to applause, looking forward to his own ceremony to sign further action against the rule. "It's on the way. Relief is on the way."

Touting the administration's mantra of "cooperative federalism," Pruitt cast the rule — also known as Waters of the U.S., or WOTUS — as an emblem of overreach by the federal government.

The Obama administration wrote WOTUS, finalized in May 2015, to clarify the reach of federal regulators over wetlands and waterways under the Clean Water Act.

Advertisement

Pruitt sued the Obama administration over the regulation as Oklahoma attorney general along with energy, agriculture and development interests.

Trump echoed conservatives' criticism of WOTUS, calling it "a massive power grab" and "one of the worst examples of federal regulation, and it's truly run amok."

"Been a disaster," the president said.

'Nice name'

Trump added that while he wasn't a fan of the regulation itself, he was partial to the acronym "WOTUS," which the Obama administration tried to avoid (Greenwire, Dec, 2, 2016).

"It's a horrible, horrible rule. It was a nice name, but everything else is bad," he said as anti-WOTUS lawmakers looked on.

Trump told Senate Environment and Public Works Chairman John Barrasso (R-Wyo.): "I tell you, John, you have the right man with Scott Pruitt. You watch the job he does."

Don Parrish, a top advocate for the Farm Bureau, said he believes today's action by the president will ultimately lead to the end of WOTUS.

"We are happy that they are going to take another look at this, and we are happy that [Pruitt] will listen to what our concerns are," he said.

Senate Majority Leader Mitch McConnell (R-Ky.) called the executive order a "big step." He slammed the WOTUS rule as "the most absurd regulation from the previous administration that would give the EPA the authority to basically supervise every puddle in America."

Sen. Joni Ernst (R-Iowa), who has led unsuccessful legislative efforts to repeal the rule, said in a statement that she felt an "urgency for it to be scrapped immediately."

"It is imperative we relieve hard-working Americans from this power grab and allow Iowans to care for their land without the heavy hand of the EPA determining their every move," she said.

Sen. Heidi Heitkamp (D-N.D.) has been one of her party's leading voices against WOTUS and joined Trump this afternoon. She said she was encouraged by the order.

Heitkamp added that Congress needed to step in and "give EPA direction on what water is jurisdictional under the Clean Water Act."

'Illusion'

Many Democrats and environmentalists who supported the Clean Water Rule as a key environmental protection slammed the executive order.

Former EPA chief Gina McCarthy, who shepherded the rule to completion, accused Trump and his defenders of playing politics.

"The only thing these orders do is make clear this Administration will defer needed public health protections for the American people for the sake of partisan politics," she said in a statement.

McCarthy noted that directing EPA and the Army Corps of Engineers to repeal or rewrite WOTUS is easier than actually doing it.

The Trump administration will have to follow the Administrative Procedure Act and use scientific backing to dispute, among other things, the 408-page technical report that accompanied the Obama regulation.

"An executive order may give the illusion they're fulfilling a campaign promise to gut the EPA, but it doesn't 'trump' a rule," she said. "They can't change science and facts, the bedrock of the Clean Power Plan and the Clean Water Rule, to fit their campaign rhetoric."

'Major attack'

Bob Irvin, president of the group American Rivers, described the damage that could ensue if WOTUS is repealed.

"Without the Clean Water Rule's critical protections, innumerable small streams and wetlands that are essential for drinking water supplies, flood protection, and fish and wildlife habitat will be vulnerable to unregulated pollution, dredging and filling," he said.

Navis Bermudez, deputy legislative director at the Southern Environmental Law Center, agreed. "This is a major attack against the nation's Clean Water Act, which has provided fundamental water protections for nearly 45 years and guaranteed water for all Americans," she said.

Sen. Tom Carper (D-Del.), ranking member on the Environment and Public Works Committee, said in a statement that Trump should have explicitly directed EPA to rewrite the regulation rather than leave the door open for it to be rescinded.

"If President Trump doesn't think this rule is perfect, then he should tell his new EPA Administrator to roll up his sleeves and work to make it better," Carper said. "Instead, he has allowed his EPA to abandon critical clean water protections, to limit protected waters, and to create even more uncertainty with the stroke of his pen."

Heller reported from National Harbor

E&E News

<http://www.eenews.net/eenewspm/2017/03/01/stories/1060050783>

Agencies roll up their sleeves, launch WOTUS review

By Ariel Wittenberg 3/1/17

The Trump administration is moving swiftly ahead with plans to rescind and rewrite the Obama administration's contentious Clean Water Rule.

U.S. EPA and the Army Corps of Engineers have given formal notice that they intend to "review and rescind or revise" the regulation, also known as the Waters of the U.S. rule, or WOTUS, which seeks to clarify the reach of federal regulators over wetlands and waterways under the Clean Water Act.

In a [notice](#) of proposed rulemaking submitted to the *Federal Register* today, the agencies say they are seeking to "provide greater clarity and regulatory certainty concerning the definition of 'waters of the United States' consistent with the principals outlined in the executive order and the agencies' legal authority."

"It is important that stakeholders and the public at large have certainty as to how the Clean Water Act applies to their activities," the notice states.

The notice follows President Trump's signing of an executive order yesterday directing EPA and the Army Corps to review the regulation, which has drawn fire from farmers, land developers and energy companies.

EPA Administrator Scott Pruitt sued the Obama administration over the regulation as Oklahoma attorney general along with industry interests. The regulation, which was finalized in May 2015, has been stayed by a federal court pending litigation.

Shortly after the executive order was signed Tuesday, Pruitt vowed to quickly repeal the regulation, telling the American Farm Bureau Federation's advocacy conference that "relief is on the way" (*E&E News PM*, Feb. 28).

The notice of proposed rulemaking does not include any reference to the lengthy scientific record that the Obama administration accumulated in writing WOTUS, which the new administration would have to overcome in rescinding or rewriting it. Instead, the notice justifies the review "due to concerns about the potential for continued regulatory uncertainty, as well as the scope and legal authority" of WOTUS. The notice also cites Trump's executive order.

According to the notice, the agencies will use the review to consider whether a 2006 Supreme Court opinion written by former Justice Antonin Scalia should be used to decide which wetlands and streams are protected under the Clean Water Act.

Doing so would mark a significant change in the government's legal strategy for deciding federal jurisdiction, with both the George W. Bush and Obama administrations instead relying on an opinion by Justice Anthony Kennedy in that same case, *Rapanos v. United States*.

In a 4-1-4 vote, five justices ruled in favor of Rapanos but split on which approach to use to define government jurisdiction, with Scalia's opinion for the four conservative justices being more limiting than Kennedy's stand-alone opinion.

Scalia, who died last year, argued that the Clean Water Act only applied to "navigable waters" connected by a surface flow at least part of the year. Kennedy said waters must have a "significant nexus" to actually navigable rivers and seas, which could include biological or chemical connections.

BNA

<https://www.bna.com/water-rule-repeal-n57982084591/>

Water Rule Repeal Makes EPA's Pruitt a Farm Hero

By David Schultz 3/1/17

A ballroom full of farmers gave the new EPA administrator a hero's welcome Feb. 28 as he announced

his agency would begin the process of repealing an Obama-era water regulation.

Scott Pruitt came to an agriculture industry convention in Maryland directly from the White House, where President Donald Trump signed an executive order instructing federal agencies to begin the process of rescinding the so-called Waters of the United States, or WOTUS, rule.

“Relief is on the way,” Pruitt told the attendees the American Farm Bureau Federation convention, as they applauded in one of the three standing ovations that the Environmental Protection Agency chief received at the convention.

However, launching the repeal process will likely be much more difficult than actually repealing WOTUS, a rule that defines which bodies of water are governed by the Clean Water Act. After Pruitt’s remarks, several of the farmers he addressed told Bloomberg BNA they don’t expect to see the matter fully resolved before the end of this decade.

Executive Order

Trump’s latest executive order instructs the EPA and the Army Corps of Engineers to begin work on issuing a new rule that narrows the scope of which waters are covered by the Clean Water Act.

The agriculture industry, along with the energy sector and other industries, strongly opposed WOTUS because they worried it was too broad and would require businesses to obtain water pollution permits for activities that currently don’t require permitting.

When he was the Republican attorney general for Oklahoma, Pruitt was among many state officials who filed lawsuits against the rule.

“The statute was taken and re-imagined in a way to give this agency more power than Congress intended,” Pruitt told the convention-goers. “This is the first step toward fixing what’s wrong with our federal regulations.”

‘Not Afraid of the Process’

The president’s executive order gives his agencies the option of rescinding or revising the WOTUS rule. Repealing it without a replacement may not pass judicial muster; several Supreme Court rulings from the mid-2000s found that the federal government’s definition of which water bodies are regulated was unacceptably vague.

Trump’s Feb. 28 order instructs the agencies to consider whether they can refashion WOTUS to make it align more closely with a 2006 opinion from then-Justice Antonin Scalia, which said only streams that flow into navigable waters should be regulated.

Will Rodger, a Farm Bureau spokesman, said farmers understand that the legal uncertainty over this issue will not be solved with a single executive order.

“We’re not afraid of the process,” Rodger told Bloomberg BNA. “This will take years. We’re looking at a whole new rulemaking.”

Dave Wyeth, a grain and livestock farmer from Hendricks County, Ind., said he was unsure about the timeline for repealing WOTUS, but was “glad the discussions have started.”

Clouds Ahead?

Though some of Pruitt’s early actions may be earning cheers from various industry groups, the road ahead looks challenging.

Just as the Obama administration’s WOTUS rule drew legal challenges—some of which Pruitt himself was involved in—any attempts to repeal or revise WOTUS also will be challenged in court by

environmental groups that favor a broad interpretation of the Clean Water Act.

Additionally, though Pruitt has only been leading the EPA for one week, a controversy already has surfaced.

Pruitt told senators during his confirmation process that he never used a personal e-mail account to conduct public business, but documents later obtained through a public records request in Oklahoma showed that he had done this. Democratic senators critical of Pruitt—who say the e-mails prove their suspicion that he is too close to fossil-fuel interests—said the issue raises questions about his credibility.

Pruitt declined to answer questions on the issue from Bloomberg BNA at the Farm Bureau convention. Oklahoma officials on Feb. 28 won a stay in the state Supreme Court of a court-ordered release of another batch of e-mails and other documents after arguing it was impractical and unfair to prioritize Pruitt's e-mails over other open-records requests they have received.

Iowa Public Radio

<http://iowapublicradio.org/post/trump-orders-review-clean-water-rule-many-farm-groups-oppose#stream/0>

Trump Orders Review of Clean Water Rule that Many Farm Groups Oppose

By Kristofor Husted 3/1/17

President Donald Trump issued an executive order Tuesday directing the Environmental Protection Agency to revise a controversial environmental rule opposed by many Midwest farm groups.

Trump ordered new EPA administrator Scott Pruitt to formally revise the Obama Administration's 2015 Clean Water Rule, also known as the Waters of the U.S. Rule, which was meant to explain which rivers, streams and creeks are subject to regulation by the EPA.

The EPA used the Clean Water Rule wants to clarify a portion of the Clean Water Act to give the agency more control over millions of acres of wetlands and streams. The agency spent months trying to sell the regulations to farmers, but many did not bite.

The American Farm Bureau Federation and its many state-level counterparts pushed to change the rule, along with other farm groups, saying it was a federal overreach onto farmers' land and contending that the rule would allow the agency to dictate how farmers use certain bodies of water on farmland.

"We think it's an opportunity for EPA to listen to farmers and look at the fine print of the regulation that the Obama Administration did and then, ultimately, to get it right -- to get something that works for the environment and for farmers," says Don Parrish, senior director of regulatory relations at the AFBF.

Many environmental groups, however, say the rule is necessary to combat water pollution, especially water pollution caused by farms and ranches.

"The problem is going to be there," says Craig Cox of the Environmental Working Group, which supported the rule. "The problem is going to get worse. The problem is going to cry out for a solution."

Trump on his own can't repeal the rule. The executive order directs the new EPA administrator to revise it, which could take years.

Parrish says U.S. farmers will likely see Pruitt and the EPA working more with state agencies to set up state water regulations.

"We look at this as the first step of many that are going to have to take place in this area," Parrish says.

E&E News

<http://www.eenews.net/greenwire/2017/03/01/stories/1060050758>

WOTUS 'the first step' of reg relief for farmers — Pruitt

By Marc Heller 3/1/17

President Trump's jettisoning of the Obama administration's Clean Water Rule is just the start of an extended rollback of environmental regulations affecting farmers, U.S. EPA Administrator Scott Pruitt told the American Farm Bureau Federation yesterday.

"This is just the first step toward fixing what's wrong with our government regulations," Pruitt said at the organization's advocacy conference in Oxon Hill, Md. The group has fought to kill the so-called Waters of the U.S. rule (WOTUS)

"I'm looking forward to the regulatory rollback to provide certainty to you," said Pruitt, who received more than one standing ovation.

Court challenges blocked WOTUS's implementation, and Pruitt didn't elaborate on how the agency may rewrite the Clean Water Act regulation.

But farmers attending the speech welcomed Pruitt's new approach to regulations that might affect how farms operate, compared to the Obama administration.

"It makes a big difference, we hope," said Dave Fisher, a dairy farmer from Madrid, N.Y., and president of New York Farm Bureau.

Although the regulation has been in limbo, Fisher said he blames the WOTUS rule and other EPA regulations for increasing the cost of doing business in an industry where farmers sometimes struggle with low milk prices and high feed prices that make for narrow profit margins.

Fisher said he doesn't want to worry about clean water regulations "every time I want to dig a ditch."

Although the rule's application to farms has been unclear — farms are exempt from many such regulations, environmental groups say — the uncertainty alone makes the rule's demise welcome, said Eric Ooms, New York Farm Bureau vice president and a farmer from Kinderhook, N.Y.

"If I tick off my neighbors, something's hanging over us," Ooms said.

Other farm groups praised the administration's move. Western Growers said Trump's executive order "will provide adequate space for these federal agencies to engage state and local governments to craft

an alternative solution that both fits within the boundaries prescribed in the Act and serves the best interests of the environment and key stakeholders."

Pruitt was short on specifics about other regulations affecting agriculture that might face extra scrutiny. He said the agency needs to tackle cleanup of around 1,300 Superfund sites nationally and roll back the Clean Power Plan regulating power plant emissions.

Broadly, Pruitt said, EPA will make a greater effort to coordinate with localities, including county commissioners, mayors and governors on environmental protection — a term he calls "cooperative federalism."

"Washington doesn't always know best, and we're in the business of making sure people know that across the country," Pruitt said, adding that he met with 20 governors in Washington for the National Governors Association winter meeting late last month to talk about federal-state cooperation.

"They walked out of our offices with a spring in their step, because they hadn't heard that for the last several years," Pruitt said.

Breitbart

<http://www.breitbart.com/big-government/2017/03/01/donald-trump-orders-deconstruction-obama-era-epa-water-rule/>

Donald Trump Orders Deconstruction of Obama-Era EPA Water Rule

By Charlie Spiering 3/1/17

President Donald Trump signed an executive order Tuesday effectively walking back the "Waters of the United States" rule issued by the Environmental Protection Agency (EPA) during the Obama administration.

"EPA's so-called waters of the United States rule is one of the worst examples of federal regulation, and it's truly run amok," Trump said during the signing ceremony in the Oval Office.

Farmers, ranchers, and agricultural businesses opposed the rule, as it allowed the EPA to regulate any water on a farmer's land.

Trump called it "a disaster" during remarks, reminding the public that the EPA threatened a Wyoming rancher with finest of \$37,000 a day after he dug a stock pond on his land.

"It's a horrible, horrible rule," Trump said. "It was a nice name, but everything else is bad."

Trump's executive order directs the EPA and the Army Corps of Engineers to withdraw and reconsider the rule back to the government agencies on the basis that it overreaches their authority.

Several U.S. senators, including Sen. John Barrasso (R-WY), Sen. Joni Ernst (R-IA), and Sen. Heidi Heitkamp (D-ND.), attended the signing. Some members of the House of Representatives and several county commissioners also attended.

By Ariel Wittenberg 3/1/17

The Trump administration's plans to review and possibly rescind the Clean Water Rule could threaten drinking water for as many as 117 million Americans, the nonprofit Environmental Working Group said in an analysis released today.

The county-by-county analysis found that one-third of American residents get at least some of their drinking water from small streams and isolated wetlands that the regulation was crafted to protect, the group said.

More than 72 million of those people in 1,033 counties rely on small streams for more than half their water, the report says.

Finalized by the Obama administration in May 2015, the Clean Water Rule seeks to clarify the reach of the federal government over wetlands and small waterways under the Clean Water Act.

Also known as the Waters of the U.S., or WOTUS, rule, the regulation was opposed by farmers, housing developers and energy companies. WOTUS was decried by conservative politicians as an emblem of government overreach. As Oklahoma attorney general, the new U.S. EPA administrator, Scott Pruitt, sued to halt the regulation, which has been stayed by a federal court while litigation plays out.

Yesterday, President Trump signed an executive order directing EPA and the Army Corps of Engineers to begin a formal review of the regulation, a likely first step to rescinding it.

In its analysis, the Environmental Working Group used geospatial data compiled by EPA during a 2009 study to identify counties that are most dependent on small streams for drinking water. The EPA study had mapped so-called source protection areas, which are upstream from a drinking water intake for every public water utility.

That EPA analysis found that 57 percent of streams used for drinking water were intermittent, ephemeral or headwater streams, many of which would be protected by WOTUS.

The group used EPA results to identify the number of people living in counties where either 100 percent of residents depend on surface water for drinking water; more than half the streams providing source water are intermittent, ephemeral or headwater streams; or where the local utility serves at least 1,000 people.

They found that New York and Texas have the highest number of residents — 5 million people each — who rely on small streams for drinking water.

More than 1 million rely on such waterways in each of 19 other states, including Pruitt's home state, Oklahoma, where more than 2 million people rely on small streams for drinking water, according to the analysis.

While the results of the regulatory review remain to be seen, Pruitt did tell Congress during his confirmation hearing that he believes the Obama EPA exceeded its authority by including occasionally

wet ephemeral streams, among other types of water systems (Greenwire, Feb. 10).

Additionally, the executive order Trump signed yesterday directs EPA and the Army Corps to consider changing which Supreme Court opinions to rely on when determining where federal jurisdiction ends.

If the agencies do write a new regulation based off an opinion from Justice Antonin Scalia instead of one from Justice Anthony Kennedy, it likely would limit federal jurisdiction.

Scalia, who died last year, had argued that the Clean Water Act only applied to "navigable waters" and those connected to them by a surface flow at least part of the year.

The WOTUS regulation and previous guidance from the George W. Bush administration relied on an opinion from Kennedy that said waters must have a "significant nexus" to actually navigable rivers and seas, which could include biological or chemical connections as well as actual surface flow.

International Business Times

<http://www.ibtimes.com/what-clean-water-rule-trump-signs-executive-order-obamas-environmental-protection-2500085>

What is The Clean Water Rule? Trump Signs Executive Order on Obama's Environmental Protection Agency Act

By Juliana Rose Pignataro 3/1/17, 12:21PM

President Donald Trump signed an executive order Tuesday that took aim at former President Barack Obama's Clean Water Rule. Though the exact wording of the order has not yet been released, it directed the Environmental Protection Agency and the United States Army Corps of Engineers to "reconsider" the rule.

Passed in 2015, the Clean Water Rule was essentially a clarification and addendum to the 1972 Clean Water Act. The latter bill laid out protection for waters that were "navigable" or, in layman's terms, large, leaving America's small bodies of water vulnerable. The Obama administration introduced the Clean Water Rule, also known as the Waters of the United States Rule, to define which of the nation's small bodies of water would be subject to regulation.

The rule was met with significant opposition from farmers, developers and other groups, who felt it implemented excessive governmental regulations. Trump has called the legislation "a horrible, horrible rule," adding that it "has sort of a nice name but everything else is bad."

Environmental groups, however, said the law was necessary to keeping some of the nation's important waters.

“This vital safeguard puts an end to over a decade of polluters taking advantage of a muddled law by restoring the Clean Water Act and putting the health of our communities and families first,” Michael Brune, the Sierra Club’s executive director, said in a statement at the time of the rule’s introduction.

Two years after its passage, the rule has never officially gone into effect thanks to a tangle of ongoing litigation and a stay issued by the 6th US Circuit Court of Appeals.

“It was a massive power grab,” Trump said Tuesday before signing the executive order. “Regulations and permits starting treating our wonderful small farmers and small businesses as if they were a major industrial polluter. They treated them horribly.”

BNA

http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=106421024&vname=denotallissues&wsn=498592000&searchid=29441796&doctypeid=2&type=date&mode=doc&split=0&scm=1245&pg=0

Trump Orders Regulators to Rescind Obama Water Pollution Rule

By Jennifer A Dlouhy and Shannon Pettypiece 3/1/17

President Donald Trump ordered his administration to rescind and rewrite an Obama-era environmental rule that critics say gave the U.S. government too much power to regulate waterways nationwide. Trump signed a directive Feb. 28 compelling the U.S. Army Corps of Engineers and the Environmental Protection Agency to reconsider the 2015 “Waters of the U.S.” rule.

Trump called the rule “one of the worst examples of federal regulations,” saying it burdened farmers, ranchers and home-builders by extending the EPA's authority to “include any puddle.”

The Trump administration also will ask a federal court to halt consideration of a lawsuit from dozens of states and an assortment of businesses and agricultural groups challenging the rule while the measure is being reviewed, according to a White House official, who spoke on condition of anonymity to describe the document before its release.

Trump's decision sets in motion a slow-moving regulatory process aimed at rewriting the rule (RIN:2040-AF30) over the next several years.

It also helps deliver on his campaign pledge to rescind the measure critics said unfairly expanded the EPA's Clean Water Act jurisdiction to include dry creek beds, prairie wetlands and other territory far beyond the “navigable waters” subject to oversight under federal law.

The move is the first of several environmental directives expected from the Trump administration in coming days. Another document aims to dismantle the Clean Power Plan, former President Barack Obama's signature plan for combating climate change by slashing greenhouse gas emissions tied to the generation of electricity.

Newly installed EPA Administrator Scott Pruitt also said he wants to go after a rule imposed last year

that limits methane emissions from new and modified oil and gas wells.

Decades of Uncertainty

In imposing the Waters of the U.S. rule, the Obama administration's EPA aimed to resolve decades of uncertainty over what waterways were subject to federal regulation and oversight. In 2006, the U.S. Supreme Court fractured over the question of whether strictly navigable waters are subject to the Clean Water Act, or if the jurisdiction goes further. Developers said later guidance from the EPA only injected more confusion into permitting processes.

Obama's Waters of the U.S. rule was opposed by dozens of states and an assortment of business and agriculture groups, which complained it did nothing to clear up the murkiness and took an overly expansive view of the law.

Rewriting the measure will take significant time. It took at least two years for the Obama administration to write the measure; it could take just as long for the Trump administration to rewrite it.

—With assistance from Justin Sink.

To: Schnare, David[schnare.david@epa.gov]
From: Strauss, Alexis
Sent: Mon 3/13/2017 7:15:42 PM
Subject: RE: Bravo zulu

David,

Thank you for your note. I look forward to meeting you in early April, when the acting Regional Administrators will be in HQ (April 4-5) and joining the ECOS

meeting (April 6-7). Our Region looks forward to working with you and the new team, and supporting the Administrator.

Kind regards, Alexis

Alexis Strauss

Acting Regional Administrator

E.P.A. Region 9

75 Hawthorne Street

San Francisco, CA 94105

415-972-3572

From: Schnare, David
Sent: Monday, March 13, 2017 11:33 AM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>
Subject: Bravo zulu

For those of you with a Navy background, you can see in the subject line what I'm about to say.

Bravo Zulu (or BZ) is Navy slang for "well done."

I want to take just a moment of your time to thank all of you for the hard work you've done helping the Administrator get his agenda moved forward with dispatch. I'm encouraged by your willingness to help and your ability to help explain our complex job.

New folks are coming on board, men and women who will also need our help learning what we do and all the ways we can do it. I know you will help them as you have helped the transition team and the Administrator, his Chief of Staff and his Associate Administrator for Policy.

There will be many challenges over the next several months. New policy directions, new managers and new messages coming from within and surely from without. During this period of flux, I know you will keep your and your staff's focus on the task before us – protecting public health and welfare.

With every best wish,

David

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]; Smith, Loren (OST)[Loren.Smith@dot.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Pugliese, Anthony (OST)[anthony.Pugliese@dot.gov]; Ja'Ron Smith[]; Michael Catanzaro[]; John.S.Moran[]; Fulton, Finch (OST)[Finch.Fulton@dot.gov]
From: McCown, Brigham (OST)
Sent: Thur 3/9/2017 1:04:52 AM
Subject: Re: Dave/all - re CAFE - here is DOT's final draft

Thanks!!

Best,

Brigham

B. A. McCown
Consultant - Advisor to the Secretary
U.S. Department of Transportation
Office of the Secretary
West Building W92-319
1200 New Jersey Ave, S.E.
Washington, DC 20590
(202) 366-9315 (office)
Personal Phone/Ex. 6 7 (mobile preferred)

Folks:

Please find attached the Final Final FR Notice. The only thing that needs to be put into place is the date which is immediately above the signature box.

I am sending this to our folks to get a signature now. I will send you a copy of the signed version as soon as I get one.

David W. Schnare

Assistant Deputy Administrator

US EPA

From: Smith, Loren (OST) [mailto:Loren.Smith@dot.gov]
Sent: Wednesday, March 8, 2017 11:14 AM
To: Schnare, David <schnare.david@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; McCown, Brigham (OST) <brigham.mccown@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; Ja'Ron Smith [EOP/Ex. 6]; Michael Catanzaro [EOP/Ex. 6]; John.S.Moran [Deliberative Process Privilege/Ex. 5] Fulton, Finch (OST) <Finch.Fulton@dot.gov>
Subject: Dave/all - re CAFE - here is DOT's final draft

As yet unsigned - need EPA to insert contact info and remove your original draft label. Presume next step is for your team to review and submit for Administrator Pruitt's signature, then back to DOT.

Please let me know that you've received and your vision of plan forward.

+++

Loren Smith

U.S. Department of Transportation

West Building – W85-115

loren.smith@dot.gov

202-430-2952

To: Schnare, David[schnare.david@epa.gov]
Cc: Packard, Elise[Packard.Elise@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]
From: Schmidt, Lorie
Sent: Tue 3/7/2017 4:48:21 PM
Subject: Draft energy EO FR notices
noi to reconsider oil and gas--2 (003) (002).docx
noi to reconsider oil and gas--2 (003).docx

David

Kevin asked me to send you these two draft FR notices to implement the draft energy EO. One addresses the CO2 standards for both new and existing power plants (including the legal memo if you want to call it out separately), and one addresses methane standards for the oil and gas industry.

Sarah Dunham has reviewed these.

Let us know if you need something else.

Lorie

Lorie Schmidt

Associate General Counsel for Air and Radiation

Office of General Counsel

US Environmental Protection Agency

(202)564-1681

From: Burton, Tamika
Location: WJC-N 3415
Importance: High
Subject: Canceled: Hot Issues Check-in
Start Date/Time: Wed 3/15/2017 7:00:00 PM
End Date/Time: Wed 3/15/2017 7:30:00 PM

To: Schnare, David[schnare.david@epa.gov]; Hull, George[Hull.George@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/14/2017 5:32:37 PM
Subject: RE: Briefing On EPA Energy & Environmental Policy

It would be good for us to have a presence there. I'm not sure who to suggest.

From: Schnare, David
Sent: Tuesday, March 14, 2017 12:11 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Hull, George <Hull.George@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>
Subject: Fwd: Briefing On EPA Energy & Environmental Policy

Ryan

Do you want to send anyone, and if so, who.

We need to get back to Martini asap.

dschnare

Sent from my iPhone

Begin forwarded message:

From: Matthew Martini <mmartini@CRCPublicRelations.com>
Date: March 14, 2017 at 12:07:45 PM EDT
To: "schnare.david@epa.gov" <schnare.david@epa.gov>
Subject: Briefing On EPA Energy & Environmental Policy

David,

JP Morgan is hosting a trip to DC for folks who are focused on energy. In particular, this group is focused on the impact of current and future U.S. Energy policy on oil and gas both domestically and internationally. They are meeting with members of Congress and committee staff to discuss these matters.

Please, let me know if someone at EPA is available to attend to provide a briefing

on the direction of EPA.

Key areas of discussion:

- U.S. policy on domestic energy
- Border Adjustment Tax (BAT)
- Renewable Fuels Standards
- Environmental Policy, including Climate Change
- Foreign Trade
- Geopolitics' influence on commodity prices

They have secured a meeting space at the St. Regis hotel so they do have the ability to host meetings if necessary.

Event: J.P. Morgan Washington D.C. Energy Policy Trip

When: Monday, March 20 & Tuesday, March 21, 2017

Where: Washington, DC

Thank you,

Matt

From: Burton, Tamika
Location: WJC-N 3402
Importance: Normal
Subject: Discussion on SES
Start Date/Time: Fri 3/3/2017 8:30:00 PM
End Date/Time: Fri 3/3/2017 9:00:00 PM
[PENDING SES INFO Mar 1.docx](#)
[SES CDP One Pager.final.docx](#)
[Senior Executive Service Hiring issues.docx](#)

Sct: Tamika Burton, 564-4711

To: Schnare, David[schnare.david@epa.gov]
From: Steve Milloy
Sent: Mon 3/6/2017 8:06:42 PM
Subject: Sinclair brief
1 - Amicus Brief by WY.pdf

Here's the issue.

No. 16-9532

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

SINCLAIR WYOMING REFINING COMPANY and SINCLAIR CASPER
REFINING COMPANY

Petitioners-Appellants,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respondent-Appellee.

ON A PETITION TO REVIEW A DECISION OF THE ENVIRONMENTAL
PROTECTION AGENCY UNDER THE CLEAN AIR ACT

AMICUS CURIAE BRIEF BY THE STATE OF WYOMING

Erik E. Petersen
Senior Assistant Attorneys General
Wyoming Office of Attorney General
2320 Capitol Avenue
Cheyenne, WY 82002
(307) 777-6946 phone
(307) 777-3542 fax
erik.petersen@wyo.gov

Counsel for the State of Wyoming

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

CONCISE STATEMENT OF IDENTITY1

SOURCE OF AUTHORITY 1

INTRODUCTION2

BACKGROUND3

ARGUMENT6

 I. The disproportionate economic hardship on Wyoming.....6

 II. EPA’s statutory interpretation is incorrect..... 11

CONCLUSION.....12

TABLE OF AUTHORITIES

CASES

<i>Central Bank of Denver v. First Interstate Bank</i> , 511 U.S. 164 (1994)	11
<i>New Mexico ex rel. Richardson v. Bureau of Land Management</i> , 565 F.3d 683 (10th Cir. 2009)	5
<i>O’Toole v. Northrop Grumman Corp.</i> , 499 F.3d 1218 (10th Cir. 2007)	4

STATUTES

42 U.S.C. §§ 7401 to 7671q.....	5, 10, 11
42 U.S.C. § 7545(o)	3, 11, 12
42 U.S.C. § 7545(o)(3)(B)(ii)	3
42 U.S.C. § 7545(o)(9).....	4, 11
42 U.S.C. § 7545(o)(9)(B)	4, 6

CODE OF FEDERAL REGULATIONS

40 C.F.R. § 80.1406(a).....	3
40 C.F.R. § 80.1407(f)(5)	10
40 C.F.R. § 80.1426	3
40 C.F.R. § 80.1427	3, 4

CONGRESSIONAL MATERIALS

S. Rep. 111-45, at 109 (2009)	8
-------------------------------------	---

OTHER AUTHORITIES

- Michael McDonald, *Independent Refiners Face Existential Threat*, OilPrice.com, Aug. 21, 2016, <http://oilprice.com/Energy/Crude-Oil/Independent-Refiners-Face-Existential-Threat.html> 4,7
- Statement of Adam Sieminski, Administrator, Energy Information Administration, before the Subcommittee on Energy and Power Committee on Energy and Commerce, June 26, 2014, https://www.eia.gov/pressroom/testimonies/sieminski_06262013.pdf 9,10
- United States Department of Energy, *Small Refinery Exemption Study*, March 2011, <https://www3.epa.gov/otaq/regs/hardship-exemptions/documents/small-refinery-exempt-study.pdf> 5
- United States Department of Transportation, Federal Highway Administration, *Motor-Fuel Volume Taxed – 2014*, Table MF-2, <https://www.fhwa.dot.gov/policyinformation/statistics/2014/mf2.cfm> 11
- United States Energy Information Administration, *Energy Consumption Estimates for Major Energy Sources in Physical Units, 2014*, Table C2 https://www.eia.gov/state/seds/sep_use/notes/use_print.pdf 10
- United States Energy Information Administration, *Refinery Capacity Report*, June 22, 2016, <http://www.eia.gov/petroleum/refinerycapacity/table3.pdf> 6,7
- United States Energy Information Administration, *Selected States Comparison, Energy Indicators*, <https://www.eia.gov/state/compare/#?selected=US-WY> 9
- United States Energy Information Administration, Table C13, *Energy Consumption Estimates per Capita by End-Use Sector, Ranked by State, 2014*, https://www.eia.gov/state/seds/data.cfm?incfile=/state/seds/sep_sum/html/rank_use_capita.html&sid=US 8
- United States Environmental Protection Agency, *Ethanol Waivers*, <https://www.epa.gov/gasoline-standards/ethanol-waivers-e15-and-e10> 9

United States Environmental Protection Agency, *Renewable Fuel Annual Standards*, <https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-annual-standards>9

WyoHistory.org, *Refining Wyoming’s Oil for 120 years*, <http://www.wyohistory.org/encyclopedia/refining-wyomings-oil-120-years>7

CONCISE STATEMENT OF IDENTITY

The State of Wyoming submits this amicus curiae brief in support of Petitioners Sinclair Wyoming Refining Company and Sinclair Casper Refining Company (collectively, Sinclair). As a mostly rural state with the smallest population in the Union, Wyoming has a significant interest in ensuring that small, independent refiners – the only type of refiners that operate in Wyoming – are treated fairly and in accordance with the intent of Congress.

SOURCE OF AUTHORITY

Federal Rule of Appellate Procedure 29(a) authorizes Wyoming to file an amicus brief in this matter without leave of the Court or the consent of the parties. Fed. R. App. P. 29(a).

INTRODUCTION

Wyoming offers the following discussion to aid the Court in its review of the parties' respective arguments. Apart from concurring with the chief legal argument advanced by Sinclair, Wyoming will focus on the impact of the Environmental Protection Agency's Renewable Fuel Standard on small refiners throughout the State and on the State itself. In this way, Wyoming offers the Court context in which to view EPA's flawed interpretation of Section 211(o) of the Clean Air Act.

All of the refining capacity located in Wyoming's comes from small, independent refiners. And the structure of EPA's Renewable Fuel Standard, coupled with regional dynamics, leaves not only Sinclair's refineries but all refineries located in Wyoming at a significant competitive disadvantage that may eventually lead to closure. Congress intended to prevent precisely this type of situation when it created the small refinery exemption to EPA's Renewable Fuel Standard. But EPA has thwarted Congress's intent with its flawed interpretation of what a small refiner must show in order for the agency to grant an exemption to the Renewable Fuel Standard. Wyoming respectfully requests that this Court consider these factors when reviewing the parties' arguments.

BACKGROUND

In 2005, Congress established a requirement that transportation fuel sold in the United States must include a certain amount of renewable fuel. 42 U.S.C. §

7545(o). As a practical matter, EPA must hold someone in the transportation fuel production stream responsible to ensure that this requirement is met. Compliance with the statutory mandates falls on “obligated parties,” which the statute describes as “refineries, blenders, and importers, as appropriate.” 42 U.S.C. § 7545(o)(3)(B)(ii). “Refiners” produce petroleum-based fuels, whereas “blenders” blend renewable fuel (and other additives) into petroleum-based fuels to produce the transportation fuel actually sold to consumers. Some companies are both refiners and blenders. Purportedly for reasons of administrative ease, in its regulations EPA placed the responsibility for compliance solely on refiners and importers of transportation fuel. 40 C.F.R. § 80.1406(a).

In its regulations, EPA provides refiners and importers several ways to comply with the agency’s Renewable Fuel Standard. *See* 40 C.F.R. § 80.1427. The primary way to comply is to blend transportation fuel with a renewable fuel, thereby creating credits, known as “renewable identification numbers,” or “RINs,” for each blended gallon of fuel. 40 C.F.R. § 80.1426. To the extent that this blending activity does not create enough credits for a refiner or an importer to comply with the Renewable Fuel Standard, a refiner or an importer can purchase RINs from an entity that possesses an excess. 40 C.F.R. § 80.1427. If the market price for RINs is high,

as is currently the case, this can place a significant financial burden on small refiners of transportation fuel.¹

Having recognized this reality, Congress provided that a small refinery, defined as one that has an average daily crude oil throughput of less than 75,000 barrels, may petition EPA for a temporally-limited exemption from the Renewable Fuel Standard requirement. 42 U.S.C. § 7545(o)(9). To obtain an exemption, the EPA Administrator must determine that the Renewable Fuel Standard poses a “disproportionate economic hardship” to the small refiner in question. 42 U.S.C. § 7545(o)(9)(B). As Sinclair already discussed in detail, the instant petition for review concerns EPA’s denial of Sinclair’s request for a short-term exemption. (Dkt. No. 01019690106) (Sinclair’s Br.).

The key legal issue in this case revolves around EPA’s interpretation of the term “disproportionate economic hardship.” (Dkt. No. 10382145) (Sinclair’s Pet.). In short, EPA has interpreted “disproportionate economic hardship” to mean that a small refinery must show that the Renewable Fuel Standard: (1) has a disproportionate economic **impact** on the small refinery, and (2) threatens the **viability** of the small refinery itself. (*Id.*). In the instant case, the first factor is not in

¹ Michael McDonald, *Independent Refiners Face Existential Threat*, OilPrice.com, Aug. 21, 2016, <http://oilprice.com/Energy/Crude-Oil/Independent-Refiners-Face-Existential-Threat.html> (last visited Sept. 11, 2016). “It is not uncommon for courts to take judicial notice of factual information found on the world wide web.” *O’Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1225 (10th Cir. 2007).

dispute, because all parties agree that the Renewable Fuel Standard has a disproportionate economic impact on Sinclair. (*Id.* at 27). The dispute centers around EPA’s requirement that a small refinery, such as those located in Wyoming, must show that the Renewable Fuel Standard threatens its viability in order for the refinery to obtain a short-term exemption from the requirements of EPA’s Renewable Fuel Standard. (*Id.* at 3). The viability test is summarized thusly: “Under some circumstances, a small refinery may face compliance costs that would significantly impact the operation of the firm, leading eventually to an inability to increase efficiency to remain competitive, eventually resulting in closure.”² So, in other words, in order to show a threat to viability, a small refiner must convince EPA that complying with the Renewable Fuel Standard will lead to an inability to remain competitive that will eventually lead to closure of the small refinery.³ *See id.*

² U.S. Dept. of Energy, *Small Refinery Exemption Study*, March 2011, <https://www3.epa.gov/otaq/regs/hardship-exemptions/documents/small-refinery-exempt-study.pdf> at 36 (last visited Sept. 15, 2016). It is appropriate for the Court to take judicial notice of a posting on a federal agency website. *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 702 n.22 (10th Cir. 2009).

³ Wyoming does not express any opinion here on the “special event” justification for an exemption discussed by Sinclair. (Sinclair’s Br. at 54-56).

ARGUMENT

Six refineries are located in Wyoming, although only five are currently operational.⁴ All six refineries qualify as “small refineries” under Section 211(o) of the Clean Air Act. 42 U.S.C. § 7545(o)(9)(B). Accordingly, EPA’s interpretation of the term “disproportionate economic hardship” in Section 211(o) is of critical importance to Wyoming. If EPA’s “viability” interpretation stands, then every refinery in Wyoming will continue to be negatively and unfairly impacted by the agency’s Renewable Fuel Standard. Indeed, every refinery in Wyoming may be pushed to unprofitability or the very brink of insolvency by the agency’s Renewable Fuel Standard. It is not hyperbole to say that the agency’s Renewable Fuel Standard may eventually be the end of refining in Wyoming, because businesses are unlikely to continue to operate in a state where they can barely survive, let alone make a profit sufficient to justify their investment.

I. The disproportionate economic hardship on Wyoming

The potential loss of refining capacity in Wyoming is of critical concern to the State. Every major multi-national oil company that once had refining capacity in

⁴ U.S. Energy Information Administration, *Refinery Capacity Report*, June 22, 2016, <http://www.eia.gov/petroleum/refinerycapacity/table3.pdf> (last visited Sept. 11, 2016).

Wyoming has now sold its interests.⁵ As a result, small and independent refiners now own the entirety of the refining capacity in Wyoming.⁶ This shift is significant, because small and independent refiners face far greater challenges to their survival than their much larger competitors.⁷ Large refiners possess efficiencies and economies of scale that are out of the reach of small refiners.⁸ And because these factors reduce per-barrel operating costs and increase plant profitability, small refiners must operate on thinner margins than their larger competitors. Moreover, large refineries owned by multi-national oil companies tend to have better access to financial capital and other resources. These factors and others make small refiners far more susceptible to the negative financial impacts of EPA's Renewable Fuel

⁵ See generally WyoHistory.org, *Refining Wyoming's Oil for 120 years*, <http://www.wyohistory.org/encyclopedia/refining-wyomings-oil-120-years> (last visited Sept. 11, 2016).

⁶ See U.S. Energy Information Administration, *Refinery Capacity Report*, June 22, 2016, <http://www.eia.gov/petroleum/refinerycapacity/table3.pdf> (last visited Sept. 11, 2016).

⁷ See, e.g., Michael McDonald, *Independent Refiners Face Existential Threat*, OilPrice.com, Aug. 21, 2016, <http://oilprice.com/Energy/Crude-Oil/Independent-Refiners-Face-Existential-Threat.html> (last visited Sept. 11, 2016).

⁸ For example, the average daily throughput of Wyoming's five small refineries averages roughly 35,000 barrels. Whereas in Texas and Louisiana, the larger refineries have a daily throughput in excess of 500,000 barrels. See U.S. Energy Information Administration, *Refinery Capacity Report*, June 22, 2016, <http://www.eia.gov/petroleum/refinerycapacity/table3.pdf>, at 11, 17, 23 (last visited Sept. 11, 2016).

Standard. And because the entirety of Wyoming's refining capacity is owned and operated by small, independent refiners, the State and its citizens also are more susceptible to the financial impacts of EPA's regulation.

Regional dynamics exacerbate this reality. And Congress made clear that regional dynamics should be a relevant consideration for EPA when the agency studies whether to grant a short-term exemption from the Renewable Fuel Standard. *See* S. Rep. 111-45, at 109 (2009). For example, citizens of Wyoming must rely heavily on vehicular transport because: (1) there is no meaningful passenger train service in the state; (2) there is very limited air and bus service in Wyoming; and (3) with the state's largest city possessing only 60,000 people, mass transit is not yet a feasible option. Because of this, citizens in Wyoming must drive far more than the residents of most other states. It is unsurprising then, that Wyoming citizens consume more transportation fuel per capita than residents of other states.⁹ While the average citizen of the United States travels 9,371 miles per year in a vehicle, the average citizen of Wyoming travels 15,515 miles per year in a vehicle.¹⁰ As a result,

⁹ U.S. Energy Information Administration, Table C13, *Energy Consumption Estimates per Capita by End-Use Sector, Ranked by State, 2014*, https://www.eia.gov/state/seds/data.cfm?incfile=/state/seds/sep_sum/html/rank_use_capita.html&sid=US (last visited Sept. 11, 2016).

¹⁰ *See* U.S. Energy Information Administration, *Selected States Comparison, Energy Indicators*, <https://www.eia.gov/state/compare/#?selected=US-WY> (last visited Sept. 11, 2016).

Wyoming's citizens consume more energy for vehicular transportation than all but one other state.¹¹ The potential shuttering of refining capacity in the state threatens significant impacts on Wyoming's citizens, either through cost increases as fuel must be shipped from out-of-state or simply the decreased availability of transportation fuel in Wyoming, especially in rural areas.

Wyoming refiners also suffer from a "RIN deficiency" problem. EPA's Renewable Fuels Standard requires refiners to blend, approximately, one gallon of renewable fuel with every nine gallons of gasoline or diesel fuel.¹² With respect to gasoline, this standard is reasonably achievable, because both the market and existing vehicle engines will accept a gasoline blend that includes 10 percent ethanol.¹³ This is much more challenging with diesel fuel, which must be blended at a lower percentage.¹⁴ The Administrator of the Energy Information Administration

¹¹ U.S. Energy Information Administration, Table C13, *Energy Consumption Estimates per Capita by End-Use Sector, Ranked by State, 2014*, https://www.eia.gov/state/seds/data.cfm?incfile=/state/seds/sep_sum/html/rank_use_capita.html&sid=US (last visited Sept. 11, 2016).

¹² U.S. Environmental Protection Agency, *Renewable Fuel Annual Standards*, <https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-annual-standards> (last visited Sept. 11, 2016).

¹³ See U.S. Environmental Protection Agency, *Ethanol Waivers*, <https://www.epa.gov/gasoline-standards/ethanol-waivers-e15-and-e10> (last visited Sept. 12, 2016) (recognizing that almost all gasoline today is an E10 blend).

¹⁴ See Statement of Adam Sieminski, Administrator, Energy Information Administration, before the Subcommittee on Energy and Power Committee on

recognized that “typical biodiesel blending yields only about one-third of the RINs required” and that refiners “must make up for the shortfall by purchasing the now higher-priced RINs.” *Id.* That is precisely what is happening in Wyoming.

Some refiners close this gap by exporting diesel fuel to foreign markets, thereby escaping the Renewable Fuel Standard requirement. *See* 40 C.F.R. § 80.1407(f)(5). But while that is a viable option for refiners with operations near the coast, such as Louisiana and Texas, this option is not realistically available to landlocked refiners that are far from the coast, as in Wyoming. As a result, small refiners in Wyoming are forced to purchase costly RINs to comply with the Renewable Fuel Standard. And the more diesel fuel that a small Wyoming refinery produces, the bigger the problem gets.

And in Wyoming, the problem does get bigger. Wyoming has a disproportionately high diesel fuel consumption rate when compared to the rest of the United States. For example, in 2014, the average consumption rate of transportation fuel in the United States was roughly 46.7 percent gasoline, 36.4 percent diesel fuel, and 7.7 percent jet fuel.¹⁵ In Wyoming, the rates were 26.7

Energy and Commerce, June 26, 2014, https://www.eia.gov/pressroom/testimonies/sieminski_06262013.pdf, at 10 (last visited Sept. 12, 2016).

¹⁵ U.S. Energy Information Administration, *Energy Consumption Estimates for Major Energy Sources in Physical Units, 2014*, Table C2, https://www.eia.gov/state/seds/sep_use/notes/use_print.pdf (last visited Sept. 11, 2016).

percent gasoline, **52.7 percent** diesel fuel, and 1.6 percent jet fuel. *Id.* Wyoming is the only state in the nation where the use of diesel fuel exceeds the use of gasoline.¹⁶ This exacerbates the RIN deficiency that small refiners in Wyoming face and makes them more vulnerable to the negative financial impacts of EPA's Renewable Fuel Standard.

As discussed, Congress recognized the difficulties faced by small refiners, such as those located in Wyoming, and provided a safety valve to EPA's potentially crippling Renewable Fuel Standard. 42 U.S.C. § 7545(o)(9). And yet, EPA has interpreted the relevant statutory language in a way that denies small refiners the protections that Congress intended to afford. (Sinclair's Br. at 33-49). This was not the intent of Congress. (*Id.*); *see* 42 U.S.C. § 7545(o)(9).

II. EPA's statutory interpretation is incorrect.

Wyoming concurs with Sinclair that EPA's requirement that a small refiner must show a threat to viability to obtain an exemption from the Renewable Fuel Standard is contrary to the plain language of Section 211(o) of the Clean Air Act. (Sinclair's Br. at 33-49). Neither the term "viability" nor the concept of a threat to viability appears in the statute. 42 U.S.C. § 7545(o). If Congress had wanted to

¹⁶ *See* U.S. Dept. of Transportation, Federal Highway Administration, *Motor-Fuel Volume Taxed – 2014*, Table MF-2, <https://www.fhwa.dot.gov/policyinformation/statistics/2014/mf2.cfm> (last visited Sept. 11, 2016).

condition the granting of a short-term exemption on a showing of a threat to the viability of a refiner, Congress would have said so expressly. *Cent. Bank of Denver v. First Interstate Bank*, 511 U.S. 164, 176-77 (1994). But Congress did not do that. 42 U.S.C. § 7545(o). Accordingly, and for the reasons spelled out in more detail in Sinclair's brief, EPA incorrectly interpreted Section 211(o) of the Clean Air Act. (Sinclair's Br. at 33-49). The agency's decision is arbitrary and capricious as a result.

CONCLUSION

For the foregoing reasons, Wyoming respectfully requests that this Court grant Sinclair Wyoming Refining Company and Sinclair Casper Refining Company's petition for review and remand the matter to EPA for action consistent with the Court's ruling.

Submitted this 23rd day of September, 2016.

/s/ Erik E. Petersen

Erik E. Petersen, WSB No. 7-5608
Senior Assistant Attorneys General
Wyoming Attorney General's Office
2320 Capitol Avenue
Cheyenne, WY 82002
Telephone: (307) 777-6946
Facsimile: (307) 777-3542
erik.petersen@wyo.gov

Attorney for the State of Wyoming

CERTIFICATE OF SERVICE

I certify that on the 23rd day of September, 2016, I electronically filed the foregoing with the Clerk of the Court of Appeals for the Tenth Circuit using the CM/ECF system which sent a notice of electronic filing to all counsel of record.

/s/ Erik Petersen

Erik E. Petersen

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the typeface, typestyle, and word count requirements of Fed. R. App. P. 32. This brief contains 3150 words excluding those portions of the brief exempted from the word count requirement by Fed. R. App. P. 32(a)(7). I relied on Microsoft Word 2013 to determine the final word count in this proportionally-spaced brief.

CERTIFICATES OF SERVICE, DIGITAL SUBMISSIONS AND PRIVACY REDACTIONS

I hereby certify that on this 23rd day of September, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit via the appellate CM/ECF system. The parties in this case will be served electronically by that system.

I hereby certify that all required privacy redactions have been made pursuant to 10th Cir. R. 25.5; that the ECF submission is an exact copy of the hard copies filed with the Clerk; and that the digital submissions have been scanned for viruses with the Symantec™ Endpoint Protection, version 12.1.6 (12.1 RU6 MP5), Virus Definition File dated September 22, 2016 r25 and, according to the program, is free of viruses.

/s/ Erik Petersen
Erik E. Petersen

To: Schnare, David[schnare.david@epa.gov]
From: Starfield, Lawrence
Sent: Mon 3/13/2017 7:14:26 PM
Subject: RE: Bravo zulu

Thanks, Dave. Much appreciated.

Larry

From: Schnare, David
Sent: Monday, March 13, 2017 2:33 PM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>
Subject: Bravo zulu

For those of you with a Navy background, you can see in the subject line what I'm about to say.

Bravo Zulu (or BZ) is Navy slang for "well done."

I want to take just a moment of your time to thank all of you for the hard work you've done helping the Administrator get his agenda moved forward with dispatch. I'm encouraged by your willingness to help and your ability to help explain our complex job.

New folks are coming on board, men and women who will also need our help learning what we do and all the ways we can do it. I know you will help them as you have helped the transition team and the Administrator, his Chief of Staff and his Associate Administrator for Policy.

There will be many challenges over the next several months. New policy directions, new managers and new messages coming from within and surely from without. During this period of flux, I know you will keep your and your staff's focus on the task before us – protecting public

health and welfare.

With every best wish,

David

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]
From: Vizian, Donna
Sent: Wed 3/8/2017 10:32:49 PM
Subject: Extension

Suzanne has the paperwork to process your extension. They are working on it.

To: Schnare, David[schnare.david@epa.gov]
From: eopf-noreply@opm.gov
Sent: Tue 3/7/2017 4:36:15 PM
Subject: eOPF Notification: New Documents Have Been Added to Your Folder

Subject: New Documents Added

This email is to notify you that documents were added to your folder in the electronic Official Personnel File (eOPF) system.

Personal Matters/Ex. 6

To view your document(s):

1. Log into your agency's eOPF using a government-secured computer.
2. Identify new document(s) by clicking on the "Create Date" column so that new document(s) are listed first.

If you have further questions about the addition of these documents, please contact your HR representative.

Agency: <https://eopf.nbc.gov/epa/>

260529

To: Schnare, David[schnare.david@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]
From: Brown, Byron
Sent: Thur 3/9/2017 8:50:29 PM
Subject: Program Meetings

David – are you still meeting with the program offices to flag the priority actions that are getting raised to the Administrator? Can you include Samantha and me. Thanks. -- Byron

Byron R. Brown

Deputy Chief of Staff for Policy

Office of the Administrator

U.S. Environmental Protection Agency

From: Burton, Tamika
Location: WJC-N 3415
Importance: High
Subject: Canceled: Hot Issues Check-in
Start Date/Time: Mon 3/27/2017 7:00:00 PM
End Date/Time: Mon 3/27/2017 7:30:00 PM

To: Schnare, David[schnare.david@epa.gov]
From: Kaplan, Robert
Sent: Tue 3/14/2017 5:23:40 PM
Subject: Eramet

David,

I'm reaching out to Eramet directly via our Air Director in R5 to see if we have adequately addressed their concerns. We will convey our commitment to ensure that 90 jobs are not lost because of the rule. I have heard that they are also concerned about a digital camera requirement in the rule (not a financial or time-to-comply issue). We'll take into consideration whatever they want to raise with us and Ohio.

Hopefully we can get Eramet comfortable that we and Ohio are working together and addressing issues together.

- Bob

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Cell: 312-515-9827

Direct: 312-886-1499

Main: 312- 886-3000

To: Schnare, David[schnare.david@epa.gov]
From: Steve Milloy
Sent: Mon 3/6/2017 8:02:39 PM
Subject: Re: status of RFS small refinery waiver requests

Thank you.

To: Schnare, David[schnare.david@epa.gov]
From: Dunham, Sarah
Sent: Wed 3/8/2017 10:27:12 PM
Subject: RE: RFS hardship denial recommendation

FYI, I confirmed that the net refining margin numbers included in the briefing document on the small refiners do include RIN costs. (also, I will do more thinking along the lines we discussed, but keep in mind one of the factors we already take into consideration in our analysis is DOE's recommendation, so that may provide a foundation worth highlighting further)

From: Schnare, David
Sent: Tuesday, March 07, 2017 8:17 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: RFS hardship denial recommendation

Please provide me your recommendation per the attached. It would be very helpful to deal with this today.

Samantha and I agree with the OAR recommendation denying the exemptions.

dschnare

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
From: Brown, Byron
Sent: Tue 3/7/2017 4:10:08 PM
Subject: RE:

One thing I noticed in reviewing this EO is that it refers to the abbreviation "EPA" in several places but not use the actual name Environmental Protection Agency.

-----Original Message-----

From: Jackson, Ryan
Sent: Tuesday, March 7, 2017 8:28 AM
To: Schnare, David <schnare.david@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject:

What are are looking at now.

To: Schnare, David[schnare.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Bromberg, Kevin L.
Sent: Thur 3/9/2017 8:42:48 PM
Subject: RE: Hard Rock Mining Meeting

OK thanks

Kevin

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Thursday, March 09, 2017 2:48 PM
To: Bromberg, Kevin L.; Brown, Byron
Cc: Sugiyama, George; Kreutzer, David
Subject: RE: Hard Rock Mining Meeting

Kevin:

Byron has the lead on OLEM issues and you should contact him directly, as necessary.

dschnare

From: Bromberg, Kevin L. [mailto:kevin.bromberg@sba.gov]
Sent: Thursday, March 9, 2017 2:33 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Sugiyama, George <sugiyama.george@epa.gov>; Kreutzer, David <kreutzer.david@epa.gov>
Subject: Hard Rock Mining Meeting

My meeting (accompanied by our economist, Michael McManus) is scheduled for Tuesday April 21 at 11 AM with Barry Breen, and presumably OLEM staff. You asked me to tell you so that you could send someone to attend. Charley Maresca, the Director for Interagency Affairs and me are also meeting with Samantha Dravis on the following day to address this and other issues (SBREFA panel procedures and regulatory reform).

At this meeting with OLEM, I'd like to discuss our comment letter, EPA's preliminary response to this letter, and EPA's plans to work on this rulemaking during the 120 day comment period extension. Deliberative Process Privilege/Ex. 5 We also could briefly address 108(b) and the three "other" industries.

David, who is being assigned to this issue within the transition team (and possibly OP?)

George, I thought I'd copy you on this note since this issue is of major significance. Feel free to contact me.

Kevin

👤 Kevin Bromberg

Assistant Chief Counsel for Environmental Policy

📍 SBA // Office of Advocacy

409 3rd St. SW, Washington, D.C. 20416

✉ kevin.bromberg@sba.gov 📞 202.481.2963

📞 Personal Phone/Ex. 6





To: Williams, Michael B. EOP/OMB [REDACTED] Personal/Ex. 6, Schnare, David[schnare.david@epa.gov]
Cc: Campau, Anthony [REDACTED]
From: Benton, Donald
Sent: Wed 3/1/2017 10:13:22 PM
Subject: RE: Regulatory Review Update

I am hoping David is available for a 2pm tomorrow. We will confirm at 9:30am.

Will you be available?

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Williams, Michael B. EOP/OMB [mailto:[REDACTED] EOP/Ex. 6]
Sent: Tuesday, February 28, 2017 6:11 PM
To: Schnare, David <schnare.david@epa.gov>; Benton, Donald <benton.donald@epa.gov>
Cc: Campau, Anthony <[REDACTED] EOP/Ex. 6>
Subject: Regulatory Review Update

David and Don,

Thanks so much for your work on the pending regulations list you sent last week. Do you have time this week to jump on a call with Anthony and me to discuss your comments and recommended actions? [REDACTED] Deliberative Process Privilege/Ex. 5

[REDACTED] Deliberative Process Privilege/Ex. 5 Feel free to include any other relevant members of your team.

Best,

Michael

Michael B. Williams

Legal

Office of Management and Budget

(c) Personal Phone/Ex. 6

From: Anderson, Denise
Location: Alm Conference Room
Importance: Normal
Subject: Senior Staff Meeting
Start Date/Time: Mon 3/13/2017 5:00:00 PM
End Date/Time: Mon 3/13/2017 6:00:00 PM

SCt: Denise Anderson, 202-564-1782

NOTE: Due to space constraints, please contact Denise Anderson before forwarding or inviting additional meeting attendees.

Non-responsive Conference Code/Ex.6

To: Schnare, David[schnare.david@epa.gov]
From: Dunham, Sarah
Sent: Mon 3/6/2017 7:53:01 PM
Subject: status of RFS small refinery waiver requests

Here's the table that lists all the waiver requests. The first 6 identified in the table have all been responded to (all were granted).

		Staff Recommendation		Target/Issue
	Petitioner	DOE		
1	Calumet Shreveport (Shreveport, LA)	Grant	Grant	Issued 2/10
2	Calumet San Antonio (San Antonio, TX)	Grant	Grant	Issued 2/10
3	Alon (Krotz Springs, LA)	50%	Grant	Issued 2/10
4	Continental Refining (Somerset, KY)	Grant	Grant	Issued 2/24
5	Lion Oil (El Dorado, AK)	50%	Grant	Issued 3/1
6	Hunt Refining (Tuscaloosa, AL)	Grant	Grant	Issued 3/1

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

To: Schnare, David[schnare.david@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]
From: Dunham, Sarah
Sent: Wed 3/8/2017 10:19:40 PM
Subject: FW: RFS briefing paper
[RFS Update.docx](#)
[APPENDIX RFS 2018 Annual Rule update for Administrator 3.7.2017.v4.pptx](#)

Attached is the briefing paper we were asked (by Mike on behalf of Ryan Jackson) to send forward yesterday on the Renewable Fuel Standard 2018 volumes rule. Samantha, David suggested this might be helpful for you as well. At the end of the attached briefing paper (not the appendix) we identified three high level options for how to proceed with respect to the 2018 rulemaking:

Deliberative Process Privilege/Ex. 5

We would like guidance from the Administrator's office on these options to incorporate into the draft proposal. We will proceed to pull together an additional briefing paper that provides a little more context and substance on these options along with the implications of each of them for your and the Administrator's consideration.

Appendix: RFS 2018 Annual Rule

March 7, 2017

Biofuel Basics

- There are many different types of biofuels, which can vary by feedstock, chemical make-up, and other factors
- Primary examples
 - **Ethanol:** alcohol-based fuel, primarily produced from corn or sugarcane. Can be made from any sugar or starch, as well as from cellulose. Can be blended with gasoline up to certain amounts.
 - **Biodiesel:** produced from oilseed crops (e.g., soybeans) or waste oils (restaurant grease). Can be blended with petroleum-based diesel up to certain amounts.
 - **Biogas:** primary cellulosic biofuel at present. Compressed to make CNG and used in CNG vehicles.
- Clean Air Act contains specific definitions for qualifying biofuels under the program
 - Example: a biofuel feedstock must meet the definition of “renewable biomass”
- EISA established four different categories of biofuels, and establishes volume targets for each
 1. Cellulosic biofuel
 2. Biomass-based diesel
 3. Advanced biofuel
 4. Total renewable fuel

EISA's Four Fuel Categories

	Renewable Fuel Category	Example of Qualifying Renewable Fuel	Minimum Lifecycle GHG Emissions Reduction*
1.	Cellulosic	Biogas from landfills, etc. Ethanol, gasoline or diesel from corn stover, switch grass, tree residues, etc.	60%
2.	Biomass-based diesel	Biodiesel and renewable diesel from soy, canola, waste oils	50%
3.	Advanced biofuel	Ethanol from sugarcane, most biodiesel/renewable diesel	50%
4.	Renewable fuel	Ethanol from corn starch	20% (unless grandfathered)

* Defined in EISA. GHG emissions reductions compared to 2005 petroleum baseline

RFS Compliance basics

- Obligated Parties are refiners or importers of gasoline or diesel
- Biofuel volumes are converted into 4 different percentages that also reflect projected gasoline/diesel use. Obligated parties must demonstrate compliance with those percentage standards each year.
- Obligated Parties must obtain sufficient RINs (Renewable Identification Numbers) for each standard in order to demonstrate compliance
 - RIN = compliance “credit” for the program
 - RINs are generated by renewable fuel producers for each gallon of renewable fuel
 - Different RIN categories (D-Codes) for each type of fuel
 - RINs are commodities that are tradable
 - Obligated parties can buy gallons with RINs attached, or buy RINs on the market
 - At the end of the compliance year, obligated parties retire RINs
 - The RIN enables obligated parties to comply without physically producing, blending, or selling the renewable fuel themselves, allowing the marketplace to be more efficient
- Program also has other provisions allowing for flexibility in compliance (RIN carry over; deficit carry over)
- EPA publishes data on RIN generation and compliance online

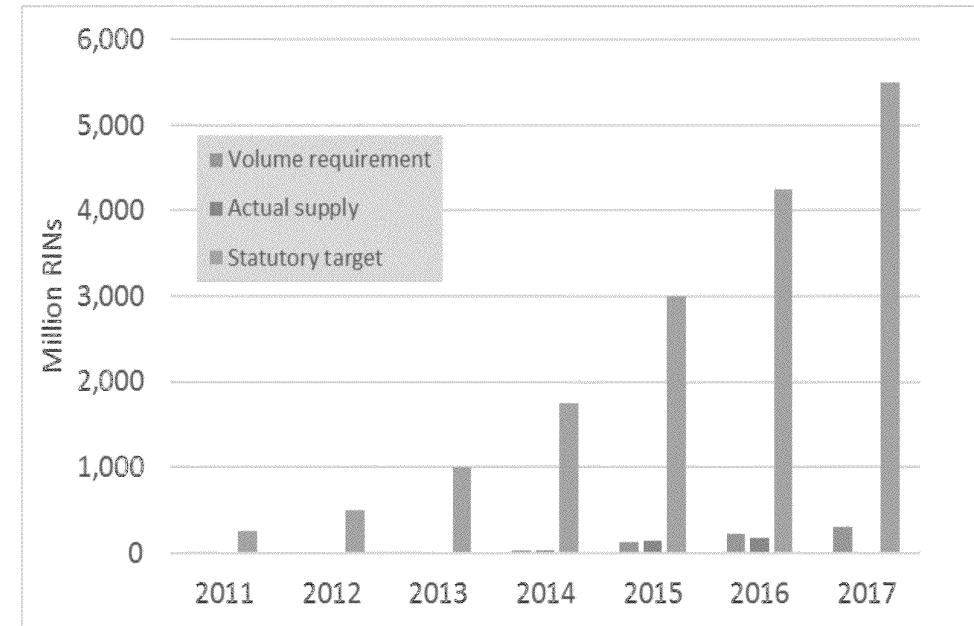
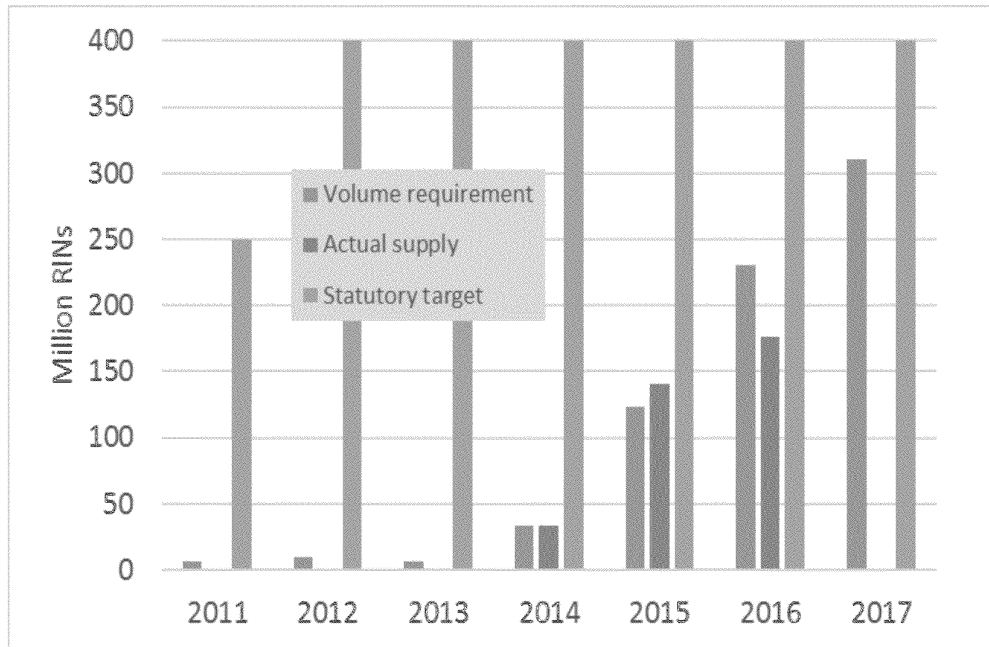
The E10 Blendwall

- E10 (gasoline with up to 10% ethanol) can lawfully be used in all vehicles and engines designed to operate on gasoline.
- 100% utilization of E10 as gasoline in the US has typically been referred to as the “blendwall”
- To blend additional ethanol beyond 100% utilization of E10 requires the manufacture and sale of higher ethanol blends like E15 and E85.
- Currently there are infrastructure and other limitations on the volume of E15 and E85 that can be consumed in the US.
 - Retail: ~3,000 retail stations currently equipped to dispense E85 and ~400 for E15
 - Vehicles: Only certified Flex Fuel Vehicles (FFVs) can lawfully use E85. There are approximately 10 -12 million FFVs on the road today but they fill on E85 <1% of the time.
 - Comparatively little E15 being sold

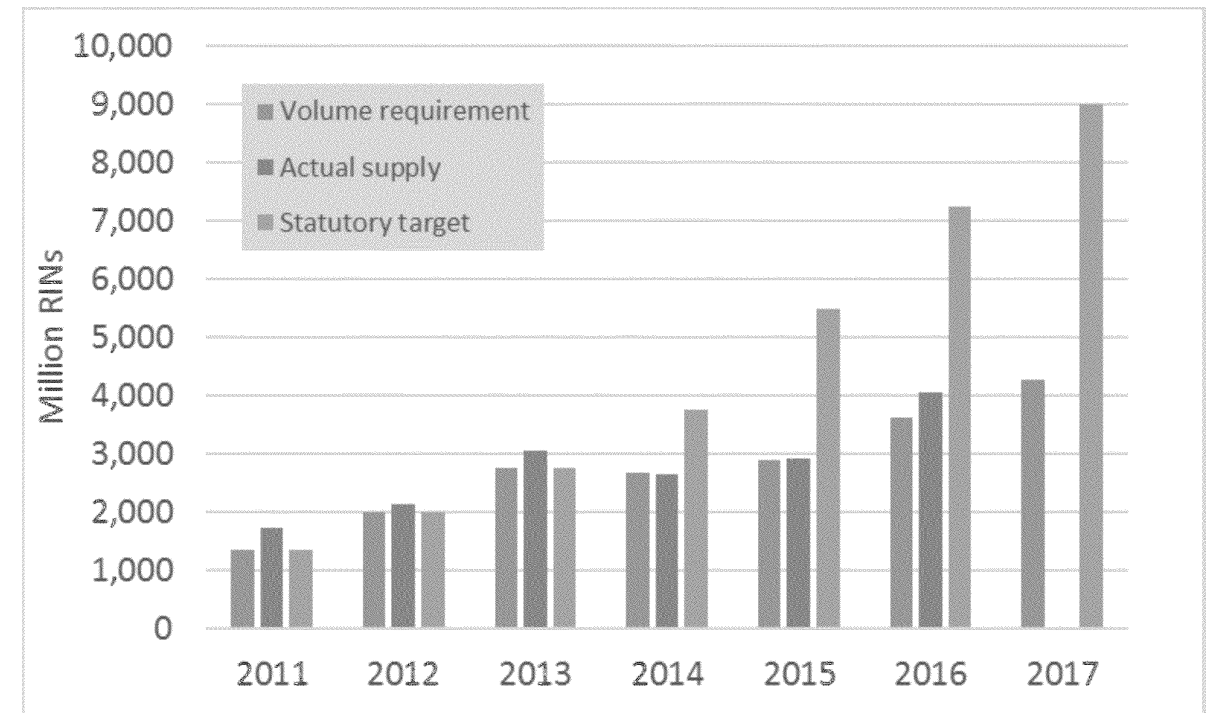
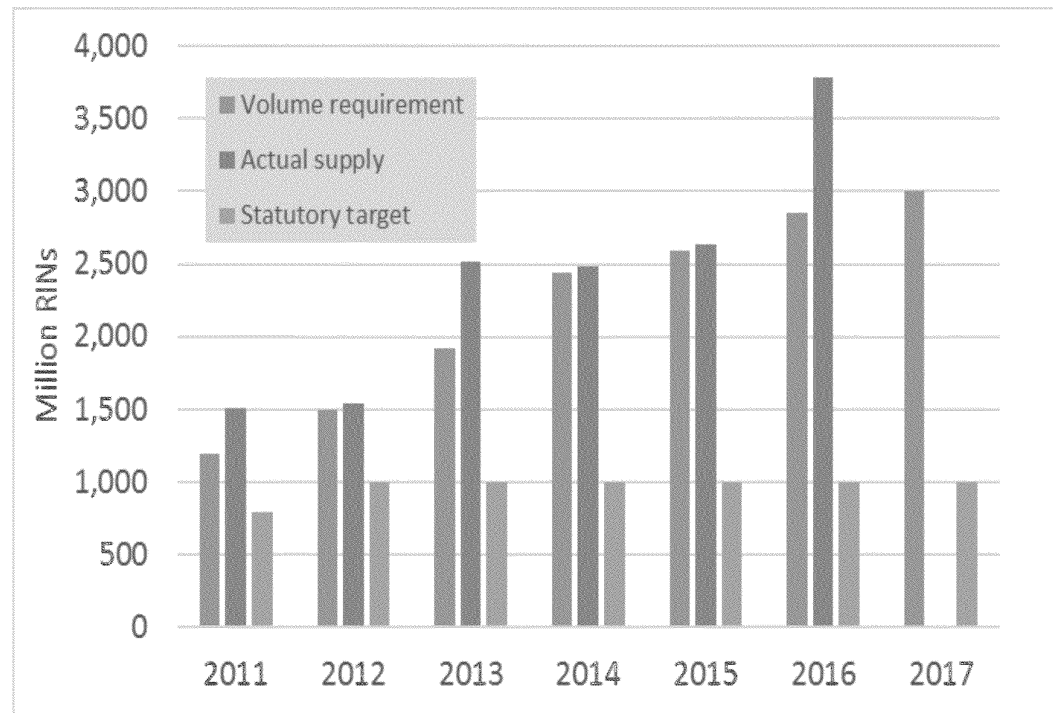
Litigation on 2014-2016 Rulemaking

- The 2014-2016 rule is being challenged by numerous parties (including ethanol producers, National Biodiesel Board, American Petroleum Institute, American Fuel and Petrochemical Manufacturers, small refiners, and other associations and companies) in the DC Circuit
- NBB challenged our interpretation and use of the cellulosic waiver authority to lower advanced volumes, arguing that EPA has limited discretion that it did not use properly
- Biofuel groups challenged EPA's interpretation and use of the general waiver authority to reduce total volumes
 - We determined that "inadequate domestic supply" was ambiguous and could include supply to vehicles
 - Litigants contend that "supply" can only mean production of biofuel, whether or not it can actually be used in vehicles
 - Litigants also contend that, apart from concerns with EPA's interpretation of supply, EPA's assessment of achievable sales of E85 was flawed because it was not based on consumption capacity of FFVs and incorrectly assessed possible price discounts that could be achieved with higher standards
- Biofuel groups also argued that carryover RINs are part of "supply," so EPA is not authorized to waive statutory volumes if they can be met with carryover RINs plus physical volume
- Obligated parties challenged the 2014-2017 BBD and 2016 cellulosic standards, and some challenged EPA's decision to refuse to consider changing the point of obligation in this rulemaking
- EPA brief was filed in mid-December, and oral argument will be April 24

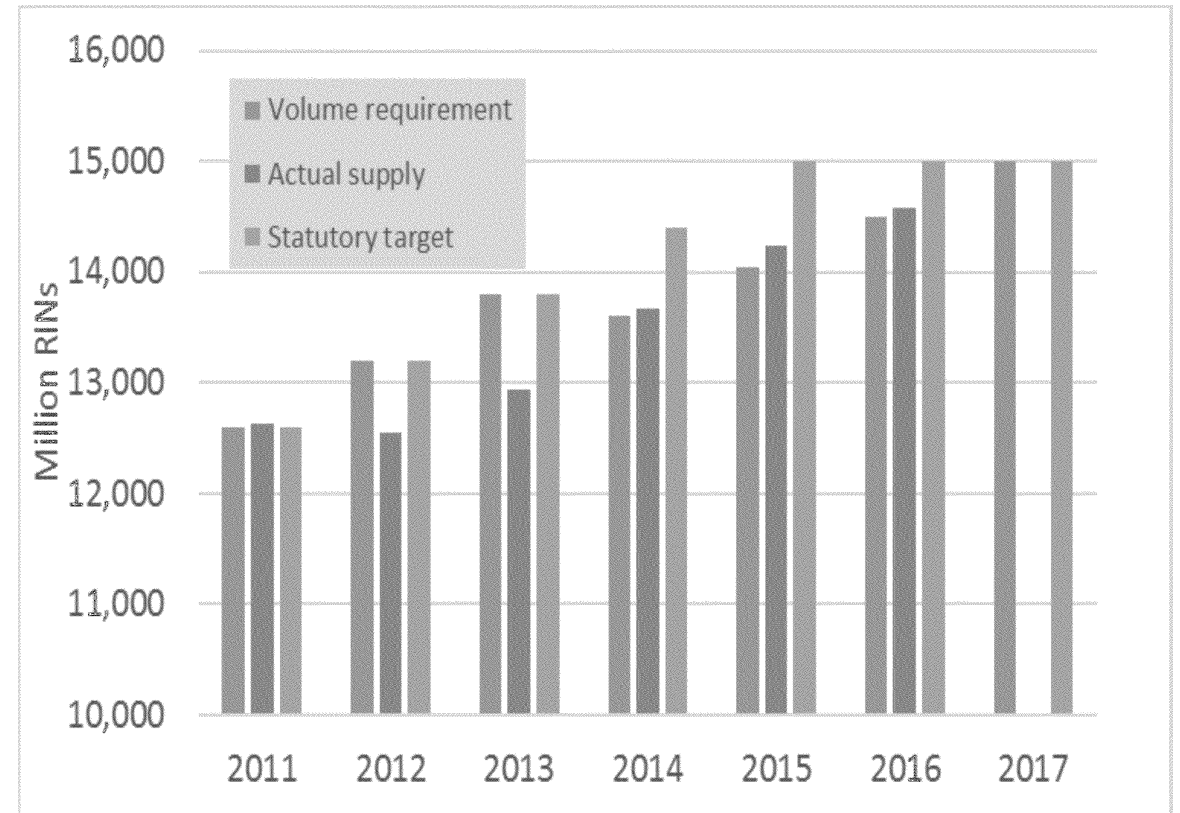
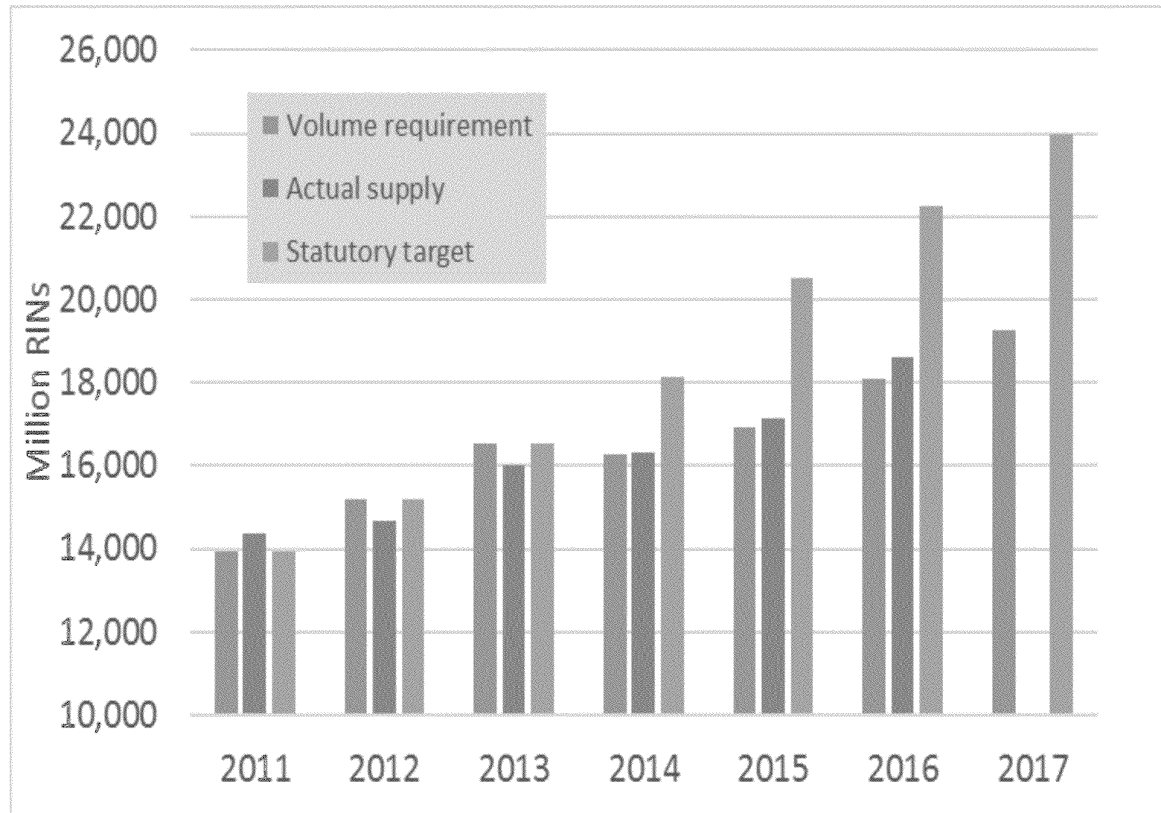
Historical Numbers: Cellulosic Biofuel



Historical Numbers: Biomass-Based Diesel & Advanced Biofuel



Historical Numbers: Total Renewable Fuel Conventional Renewable Fuel



Renewable Fuels Standard (RFS) 2018 Annual Rule

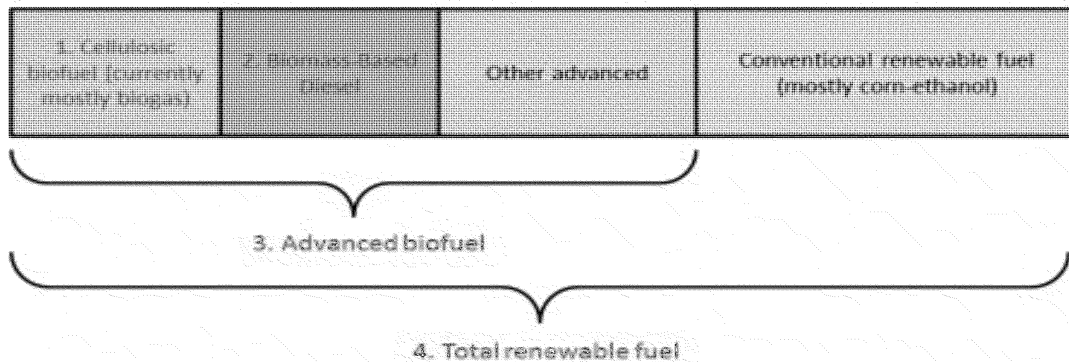
Background: RFS Program Authority

- RFS provisions of the Clean Air Act require that transportation fuel contains specified volumes of renewable fuels
- 2005: the Energy Policy Act of 2005 established the RFS program
 - Program began in 2006
 - Specified increasing annual volumes, reaching 7.5 billion gallons by 2012
 - Established the basic program structure, including compliance credit trading
 - Gasoline only, and just a single category of renewable fuel
- 2007: The Energy Independence and Security Act (EISA) of 2007
 - Specifies increasing annual volumes, reaching 36 billion gallons in 2022
 - Requires that all renewable fuel be made from “renewable biomass,” as defined by statute
 - Increased the number of categories of renewable fuel to four, extended program to include diesel
 - Other new definitions, restrictions and allowances
 - Provided various waiver authorities that allow reduction in volume targets under certain circumstances (parties can petition for waiver, or Administrator can act on own)

Background: Implementation

- Statute directs EPA to implement the program
 - Provides key consultation roles for USDA, DOE
 - Requires development and implementation of a credit program, assessment of GHG impacts of fuel/feedstock pathways, annual standard-setting process
 - Allows small refineries to petition for a waiver based on “disproportionate economic hardship
- Current status: EPA is actively implementing the program
 - Annual rulemakings to put in place the standards as required by law
 - Significant compliance and enforcement activities
 - Rules and actions are regularly litigated
- Well-organized stakeholder groups with widely varying perspectives
 - Biofuel producers and agricultural producers; gasoline and diesel refiners and importers; fuel retailers and marketers; consumer/environmental/hunger groups; states; Hill
 - Much of the ongoing program implementation efforts involve interacting with these parties and applying limited resources to responding to their disparate and often conflicting requests, petitions, etc.

Interaction Between the Four Standards



- Items in red are the fuel categories for which EPA sets standards on annual basis
- Although there is no standard for conventional biofuel (or corn ethanol), many proponents of these fuels refer to a 15 billion gallon conventional biofuel mandate

Statutory Volumes

	1. Cellulosic biofuel	2. Biomass-based diesel	3. Advanced biofuel	4. Total renewable fuel	"Conventional" (total renewable minus advanced)
2009	na	0.5	0.6	11.1	10.5
2010	0.1	0.65	0.95	12.95	12
2011	0.25	0.8	1.35	13.95	12.6
2012	0.5	1	2	15.2	13.2
2013	1	a	2.75	16.55	13.8
2014	1.75	a	3.75	18.15	14.4
2015	3	a	5.5	20.5	15
2016	4.25	a	7.25	22.25	15
2017	5.5	a	9	24	15
2018	7	a	11	26	15
2019	8.5	a	13	28	15
2020	10.5	a	15	30	15
2021	13.5	a	18	33	15
2022	16	a	21	36	15

a: statute sets 1b gal minimum, but EPA may raise requirement

Annual Volume Rules

- The CAA requires EPA to set the RFS volume requirements annually, in the form of percentage standards
 - Derived by dividing the volume requirement for each fuel type by the projected volume of gasoline and diesel fuel to be used in the compliance year.
 - Gasoline and diesel projections for the next year are provided by US Energy Information Administration
 - The volume requirements are to be based on the statutory targets, but EISA in some cases requires, and in other cases authorizes, EPA to adjust the volume requirements using waiver authorities in statute
- Standards are set through a compressed notice-and-comment process
 - Provides opportunity for public comment and stakeholder engagement
 - Two-part process: proposal and final rulemaking
 - EISA requires the standards be finalized by November 30th of the year preceding the compliance year

Volume Waivers/Adjustments

- Statute provides authority to adjust volume targets set by Congress
 - Cellulosic waiver authority
 - In setting the annual standards, EPA is required to reduce the cellulosic volume to the projected actual production
 - May reduce advanced and total standards by up to the same amount (since nested)
 - General waiver authority
 - Allows the Administrator to waive the RFS volumes, in whole or in part, based on a determination that implementation of the program would cause severe economic or environmental harm, or based on a determination that there is an inadequate domestic supply
- We have used both authorities in past rules
 - Cellulosic authority every year since 2010 to lower the cellulosic volume
 - Cellulosic authority for 2014-17 to lower the advanced and total volumes
 - General authority for 2014-16 to further lower the total volume
- Litigation over use of waiver authorities in 2014-2016 rule is ongoing
- We have also denied petitions for waiver (requests in 2008, 2012, 2013, 2016)

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

To: Jackson, Ryan[jackson.ryan@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Konkus, John
Sent: Tue 3/7/2017 4:08:07 PM
Subject: RE:

This is great. Slide 15 already has WIFIA listed as a funding mechanism. I think what we have in his speech card is exactly what they are looking for. It's impossible to ignore Flint as the canary in the coal mine (need), so leading off with that is key.

From: Jackson, Ryan
Sent: Tuesday, March 7, 2017 10:53 AM
To: Hale, Michelle <hale.michelle@epa.gov>; Konkus, John <konkus.john@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: Fwd:

For the meeting in the morning. However at some point in this mix, Pruitt, perry, chao will speak. I'm his plus one on this since its infrastructure, and I'm the big spending liberal in the group. He has a noon lunch and then 1:35 with Mulvaney in the EEOB. I have confirmed Mulvaney is meeting with a number of cabinet secretaries not simply us.

Ryan Jackson

Chief of Staff

U.S. EPA

Personal Phone/Ex. 6

Begin forwarded message:

From: "Catanzaro, Michael J. EOP/WHO" <EOP/Ex. 6>
To: "Jackson, Ryan" <jackson.ryan@epa.gov>

Wanted to be sure you had this on infrastructure. Meeting tomorrow with the private sector working group at the White House.

9:30 Introductions
9:40 Opening Remarks by Reed on the importance of infrastructure
9:50 Infrastructure and the Environment -- Lynn Scarlett
10:00 Infrastructure and Innovation -- Elon Musk

Deliberative Process Privilege/Ex. 5

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Benton, Donald
Sent: Thur 3/9/2017 8:40:17 PM
Subject: FW: Puget Sound NDZ Petition for Reconsideration [WARNING: DKIM validation failed]
[removed.txt](#)
[petition for ndz reconsideration jac edits 004.pdf](#)

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Charlie Costanzo [mailto:CCostanzo@americanwaterways.com]
Sent: Wednesday, March 8, 2017 6:48 PM
To: doug.ericksen@leg.wa.gov; Benton, Donald <benton.donald@epa.gov>; Ruff, Sandy <Sandy.Ruff@leg.wa.gov>; 'colin.swanson@mail.house.gov' <colin.swanson@mail.house.gov>; 'Young, Tom' <Tom.Young@mail.house.gov>
Cc: 'Clifford A. Webster (cwebster@carneylaw.com)' <cwebster@carneylaw.com>; Craig Montesano <CMontesano@americanwaterways.com>
Subject: Puget Sound NDZ Petition for Reconsideration [WARNING: DKIM validation failed]

Greetings all—

Late last week, AWO sent to your offices a hard copy of the attached letter, but I wanted to reach out by email to advise you that a coalition of maritime industry groups has petitioned EPA to reconsider the February 21 Affirmative Determination regarding the Puget Sound No Discharge

Zone.

We are grateful for your past support on this issue, but your help is still urgently needed. I am hopeful that you can communicate to EPA Administrator Pruitt the serious flaws and impacts of the Puget Sound NDZ on the maritime economy of Puget Sound. The proposal is overbroad, unsupported by science, economically devastating, and would do nothing to improve water quality in the Sound. The manner in which it was promulgated by Ecology and EPA Region 10 was shameful. This [article](#) in Workboat magazine from last week really clarifies points that the industry has been making for years.

Even though we believe that treated sewage from a small number of workboats is not a meaningful contributor to water quality impairment in Puget Sound, we are nonetheless willing to collaborate with Ecology on how to protect shellfish beds and areas of water quality impairment from treated vessel sewage. We will not have that opportunity if we cannot convince Administrator Pruitt to rescind the February 21 Affirmative Determination.

Anything you can do to help us in this effort would be greatly appreciated. Thank you and please let me know if you have any questions.

- Charlie

Charles P. Costanzo

Vice President – Pacific Region

The American Waterways Operators ■

5315 22nd Ave. NW

Seattle, WA 98107

www.americanwaterways.com

Personal Phone/Ex. 6

March 1, 2017

Mr. Scott Pruitt
Administrator
U.S. EPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Ave, NW
Mail Code: 1101A
Washington, DC 20460

Re: EPA's Final Affirmative
Determination notice for the Washington
State Department of Ecology Prohibition of
Discharges of Vessel Sewage (82 FR 11218)

Dear Administrator Pruitt:

We are writing as representatives of the maritime industry in Washington State and around the country to petition the Environmental Protection Agency for reconsideration of the Region 10 Acting Regional Administrator's affirmative determination that sufficient pumpout capacity exists to allow the Washington State Department of Ecology to enact a regulation creating a No-Discharge Zone (NDZ) for all of Puget Sound, published in the *Federal Register* on February 21. As the agency's chief executive, the EPA Administrator has the right and responsibility to review the actions of his subordinates or predecessors. We believe that your reconsideration is appropriate in this case as the Acting Regional Administrator's determination contravenes the White House's *Regulatory Freeze Pending Review* memorandum of January 20, 2017, instructing federal agencies not to send new regulations to the Office of the Federal Register until they can be reviewed by Trump Administration appointees.

The new Administration's review is particularly crucial considering EPA's timeline for review and action on this matter. The public comment period closed on December 23, 2016, and the decision to move forward was made by former Region 10 Regional Administrator Dennis McLerran on January 19 – his last day in office and one day before the inauguration of President Trump. We believe that the determination was made in haste and without consideration of well-articulated stakeholder concerns regarding the availability of adequate pumpout capacity, a precondition for establishment of an NDZ. Furthermore, the determination was noticed in the February 21, 2017 *Federal Register*, just days after your confirmation as EPA Administrator. The timing of the notice seems designed to avoid giving you or your staff the opportunity to review the determination carefully before it was finalized, in direct opposition to the objectives of the President's regulatory freeze.

The Acting Regional Administrator's determination is significant – and entirely at odds with the Administration's regulatory philosophy – because it authorizes Washington State to create the largest NDZ in the United States by promulgating a regulation that has no scientific basis, provides no measurable environmental benefit, and imposes substantial and unnecessary costs. In order to authorize Washington State to designate Puget Sound an NDZ, the Clean Water Act requires EPA to attest that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available in Puget Sound. However, the Acting Regional Administrator's determination that such facilities exist fails to acknowledge many of the legitimate and long-held concerns of Washington's maritime interests. It also relies on an inaccurate representation of shoreside pumpout capacity, and inadequate understanding of vessel operations and logistics.

Region 10's *Puget Sound No Discharge Zone Response to Comments* indicates that the regional staff justified its determination by seeking additional input only from entities that would support its preliminary affirmative determination of November 7, 2016, and failed to seek additional input from maritime industry commenters with concerns. For instance, although EPA acknowledged that of the 16 facilities mentioned in Ecology's NDZ petition, "there are currently two functioning shore-based stationary pumpout facilities in Puget Sound for use by the general community of commercial vessels," EPA's determination does not account for the fact that these facilities are six hours' travel time from where most commercial vessels typically operate and cannot be accessed by vessels over 70 feet in length. EPA also failed to articulate any standard of adequacy to support the final determination.

We respectfully request that EPA rescind the February 21 determination to allow for a thorough review of Ecology's petition by you and your staff. The final determination was hastily promulgated and disregarded legitimate stakeholder concerns in favor of an expedited review designed primarily to avoid scrutiny by the Trump Administration. We respectfully request that you publish in the *Federal Register* a notice rescinding EPA's February 21 determination and provide direct notice to the Washington Department of Ecology to cease any NDZ rulemaking pending EPA's reconsideration.

Thank you for your attention to this matter. We remain fully committed to the protection of Puget Sound and to science-based policies that protect and preserve our vital marine ecosystems. We would be pleased to provide further information or to meet with you or your staff to discuss this matter further. Please contact Charles Costanzo at The American Waterways Operators at (206) 257-4723 or ccostanzo@americanwaterways.com with any questions or to schedule a meeting.

Sincerely,

Charles Costanzo
The American Waterways Operators

Susan Hayman
Foss Maritime

Peter Schrappen
Northwest Marine Trade Association

Deborah Franco
Harley Marine Services

Vince O'Halloran
Puget Sound Ports Council
Maritime Trades Department, AFL-CIO

Ross McDonald
Sause Bros.

John Veentjer
Marine Exchange of Puget Sound

Erik Hansen
Dunlap Towing Company

Jill Mackie
Vigor Industrial

Rich Berkowitz
Transportation Institute

Terri Mast
Inland Boatmen's Union

Captain Dan Blanchard
UnCruise Adventure

Bruce Reed
Tidewater Transportation and Terminals

Greg Wirtz
Cruise Lines International Association

Jason Strassel
W & O Supply

Everett Billingslea
Alaska Marine Lines, Inc.

CC: Mr. Reince Priebus
Mr. Mick Mulvaney
Mr. Michael Shapiro
Mr. David Schnare
Rep. Dave Reichert
Mr. Don Benton
Sen. Doug Ericksen

Christina Villiott
Elliott Bay Design Group

Jeff Slesinger
Western Towboat Company

Roy Sarrafian
American Cruise Lines

Mark Gleason
Washington Maritime Federation

Steve Sewell
S² Strategy LLC

Chris Peterson
Crowley Maritime Company

Wayne Gilham
Recreational Boating Association of
Washington

Rear Admiral John W. Lockwood
USCG, ret.
Seattle Marine Business Coalition

Dan Zandell
Brusco Tug & Barge, Inc.

Edmund Welch
Passenger Vessel Association

Mike Curry
Global Marine Transportation, Inc.

Doug Dixon
Pacific Fishermen Shipyard

Matt Lewis
Kirby Offshore Marine

To: Schnare, David[schnare.david@epa.gov]
From: Bromberg, Kevin L.
Sent: Wed 3/1/2017 10:01:36 PM
Subject: FW: New Administration Contact at EPA re. CERCLA 108(b)

Who can the state mining regulators talk to? (see below) This is a good group – and of course, knows all about the mining regulations. Beth is the deputy to IMCC. They don't want to talk to the EPA OSWER office.

Also, Jonathan Gledhill of Policy Navigation Group, representing Freeport (US largest mining company) and National Mining Association also will be reaching out to Pruitt to talk to somebody from transition team to talk HRM CERCLA 108(b). I was asked just to let you know (they don't know your identity).

We can catch up maybe later tomorrow or later. I'm at EPA tomorrow (Clinton East) for a 3:00 TRI briefing, should I come over to say hi when I'm done?

Kevin

From: Beth Botsis [mailto:bbotsis@imcc.isa.us]
Sent: Wednesday, March 01, 2017 4:55 PM
To: Bromberg, Kevin L.
Subject: New Administration Contact at EPA re. CERCLA 108(b)

Kevin,

It was good talking with you. Per our conversation, if you know of/can get us in touch with a contact person for the new Administration who is assigned to the CERCLA 108(b) hardrock FA proposed rule that IMCC and/or the states could talk with regarding their concerns, it would be very helpful. We may also reach out directly to Secretary Pruitt at some point, now that he is on board.

Thanks again,

Beth

Beth A. Botsis

Deputy Executive Director

Interstate Mining Compact Commission

445A Carlisle Drive

Herndon, VA 20170

Ph: 703.709.8654

Fax: 703.709.8655

Email: bbotsis@imcc.isa.us

Website: www.imcc.isa.us



To: Schnare, David[schnare.david@epa.gov]
From: Vizian, Donna
Sent: Mon 3/6/2017 7:46:29 PM
Subject: Checked on your appointment

Stopped by to see you. I have some info.

Personal Matters/Ex. 6

Personal Matters/Ex. 6

From: Anderson, Denise
Location: Alm Conference Room
Importance: Normal
Subject: Senior Staff Meeting
Start Date/Time: Mon 3/27/2017 5:00:00 PM
End Date/Time: Mon 3/27/2017 6:00:00 PM

SCT: Denise Anderson, 202-564-1782

NOTE: Due to space constraints, please contact Denise Anderson before forwarding or inviting additional meeting attendees.

Non-responsive Conference Code/Ex.6

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/7/2017 4:04:22 PM
Subject: Re: Must meeting

We are not at the point in chry. Pesticides is providing me information on continued uses. I think this is a back door process which only gets us in trouble. I asked OGC to prepare the extension of time. When that's denied the decision is made easy.

We are are the point on rmp I think.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

On Mar 7, 2017, at 9:57 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Perhaps 90 minutes is gratuitous, I sort of just suggested some sort of meeting where we tackle outstanding policy issues.

I completely agree with you that we should go to him with recommendations and solutions – not problems. I think we're at a point on several issues like Chlorpyrifos, the RMP and maybe a few others where we have recommendations and we now need to sit down with him (or you) and get decisions. I think some sort of meeting for this to take place this week would be great just so we don't get behind any further.

From: Jackson, Ryan
Sent: Tuesday, March 7, 2017 10:28 AM
To: Schnare, David <schnare.david@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>
Subject: Re: Must meeting

A 90 minute meeting with him?

Are you kidding me?

Meetings with him need to be targeted with specific points and recircle for another topic later.

I'm happy to talk about this but a meeting like that will create more questions than resolutions. We need to sit down out of his presence and determine what we are approaching him with on midnight rules, consent decrees, and upcoming rules and agency actions.

For example it requires talking about these refinery denials. Telling him we have a process and we will get sued if we don't deny will not resonate with him.

I'll be back later this afternoon and need to set him up for Wednesday morning's infrastructure meeting at the White House, budget meeting with Mulvaney, and prep for CERA.

We can talk about further procedures after that.

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

On Mar 7, 2017, at 9:16 AM, Schnare, David <schnare.david@epa.gov> wrote:

Ryan:

Mike Flynn and I need to meet with you asap to sort out scheduling and how to get time critical issues to the Administrator.

Samantha is thinking we should schedule a 90 minute policy meeting with him to clear out several issues that are currently backlogged. That could work.

But, we need a routine approach to move critical issues forward for decision by the Administrator, hence the need for a brief meeting with you, Mike and me.

David.

To: Knapp, Kristien[Knapp.Kristien@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]
From: Grantham, Nancy
Sent: Thur 3/9/2017 8:38:36 PM
Subject: RE: Midterm notice

Thanks so much

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Knapp, Kristien
Sent: Thursday, March 09, 2017 3:29 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>
Subject: Re: Midterm notice

I just handed the package to Loren directly. He said DOT is holding on to it, for signature in a couple days.

Sent from my iPhone

On Mar 9, 2017, at 2:50 PM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:

Yes .. we just got them and Kristien is on her way

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Schnare, David

Sent: Thursday, March 09, 2017 2:42 PM

To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Knapp, Kristien <Knapp.Kristien@epa.gov>

Subject: RE: Midterm notice

Do that as well.

d.

From: Grantham, Nancy

Sent: Thursday, March 9, 2017 2:41 PM

To: Knapp, Kristien <Knapp.Kristien@epa.gov>; Schnare, David <schnare.david@epa.gov>

Subject: RE: Midterm notice

If come over here – we can call our contacts there. Thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Knapp, Kristien
Sent: Thursday, March 09, 2017 2:40 PM
To: Schnare, David <schnare.david@epa.gov>; Grantham, Nancy
<Grantham.Nancy@epa.gov>
Subject: FW: Midterm notice

Autopen signature complete.

I'm now ready to get it to DOT. David, is there someone in particular I should get in touch with?

To: Schnare, David[schnare.david@epa.gov]
From: Brazauskas, Joseph
Sent: Mon 3/13/2017 6:12:21 PM
Subject: Quick Call

Hey David – do you have time for a quick call today? Thanks

Joseph A. Brazauskas

Staff Director and Senior Counsel

Subcommittee on Environment

Committee on Science, Space and Technology

Lamar Smith, Chairman

P: (202) 225-6371

To: Schnare, David[schnare.david@epa.gov]
Cc: Grantham, Nancy[Grantham.Nancy@epa.gov]; Konkus, John[konkus.john@epa.gov]
From: Grantham, Nancy
Sent: Wed 3/1/2017 9:58:50 PM
Subject: FW: Oil and Gas Info Request New Brief DRAFT v5 CLEAN.docx
Oil and Gas Info Request New Brief DRAFT v5 CLEAN.docx

Please see attached. Let us know how to proceed.

Thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Minoli, Kevin
Sent: Wednesday, March 01, 2017 4:50 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: Oil and Gas Info Request New Brief DRAFT v5 CLEAN.docx

Nancy- Here are our suggested edits. As I mentioned on the phone, before taking this action OAR would like to receive direction from the Administrator or Chief of Staff, consistent with what we understand to be the protocol at the moment. Thanks, Kevin

To: Schnare, David[schnare.david@epa.gov]
From: Richardson, RobinH
Sent: Wed 3/1/2017 12:30:02 AM
Subject: Re: 16-2280 City of Taunton, MA v EPA

Hi David - I'll reach out to Deb and let you know what I learn. Best, Robin

Robin H Richardson
PDAA, EPA/OCIR
(202) 564-3358 (desk)
(703) 581-5814 (cell)
richardson.robinh@epa.gov

On Feb 28, 2017, at 1:40 PM, Schnare, David <schnare.david@epa.gov> wrote:

Robin:

When the court asks politely, they are really sending a much stronger message. Can you touch base with the Acting RA and get her to agree to ADR on this. As Mr. King is an independent third party, his presentation of the issues is likely to be an honest one. As such, it makes sense to get what we can and put this to bed. Let me know if you don't want to make the contact and if you do, what happens.

dschnare

From: [Honorable Patrick King@ca1.uscourts.gov](mailto:Honorable_Patrick_King@ca1.uscourts.gov)
[\[mailto:Honorable_Patrick_King@ca1.uscourts.gov\]](mailto:Honorable_Patrick_King@ca1.uscourts.gov)
Sent: Tuesday, February 28, 2017 12:47 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: 16-2280 City of Taunton, MA v EPA

Dear Mr Schnare,

I am Chief Settlement Counsel for the First Circuit.

The court has a mandatory mediation program for most civil cases on appeal. With regard to the Petition that is the subject of the above appeal, I decided not to conduct a mediation because counsel for the EPA made it clear to me that they would not agree to any change in the permit. Based on my discussions with the Town of Taunton, I felt that the case could be settled if EPA would agree to some relatively modest changes. I would point out that in my dealings with the EPA in Region I over the past 8 years, their approach has always been "my way or the highway."

This brings me to my reason for writing directly to you. I think a phone call from your office to the

acting head of Region I suggesting that they should mediate the dispute with the aim of reaching a resolution provided Taunton is not looking for any significant modification in the permit would go a long way to change the inflexibility Region I has shown in the past.

In closing, let me point out that I have the highest regard for the EPA lawyers that I have dealt with in the past. Their refusal to negotiate is understandable from a legal standpoint since they rarely lose on appeal given the deference paid to administrative agency decisions. However, given the significant financial burden placed on struggling communities like Taunton, it seems to me that the EPA in Region I should be showing more flexibility than it has in the past.

Please feel free to give me a call if you would like to discuss this request. Thank you for your consideration of this request.

Judge King

Hon. Patrick J. King (Ret.)
Chief Settlement Counsel
United States Court of Appeals for the First Circuit
One Courthouse Way Suite 3440
Boston, MA 02210

Honorable patrick_king@ca1.uscourts.gov

617-748-9624

Personal Phone/Ex. 6

Fax 617-748-4393

To: Schnare, David[schnare.david@epa.gov]
From: Kime, Robin
Sent: Mon 3/6/2017 7:23:36 PM
Subject: RE: WOTUS Meeting with OW Wednesday

I don't think it has been scheduled, I will reach out to Mike Shapiro's office now. And thank you.

From: Schnare, David
Sent: Monday, March 06, 2017 2:23 PM
To: Kime, Robin <Kime.Robin@epa.gov>
Subject: RE: WOTUS Meeting with OW Wednesday

Robin:

I am not seeing a meeting on my calendar for wed. on WOTUS

d.

From: Kime, Robin
Sent: Monday, March 6, 2017 2:20 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: WOTUS Meeting with OW Wednesday

Hi

I hope you are well. Samantha asked me to see if you wouldn't mind if she joined in Wednesday's WOTUS meeting with OW.

From: Anderson, Denise
Location: Alm Conference Room
Importance: Normal
Subject: Senior Staff Meeting
Start Date/Time: Mon 3/6/2017 6:00:00 PM
End Date/Time: Mon 3/6/2017 7:00:00 PM

SCT: Denise Anderson, 202-564-1782

NOTE: Due to space constraints, please contact Denise Anderson before forwarding or inviting additional meeting attendees.

Non-responsive Conference Code/Ex.6

To: Schnare, David[schnare.david@epa.gov]
From: Sarvadi, David G.
Sent: Thur 3/9/2017 8:35:58 PM
Subject: RE: We're available Wednesday.

Thanks.

DGS

David Sarvadi
Keller and Heckman llp
202-434-4249

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Thursday, March 09, 2017 3:35 PM
To: Sarvadi, David G.
Subject: RE: We're available Wednesday.

Wednesday the 15th at 11:00 am. Room 3400 EPA North Wing. Contact me at 202-564-3073 to be escorted up.

d.

From: Sarvadi, David G. [mailto:Sarvadi@khlaw.com]
Sent: Thursday, March 9, 2017 2:58 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: We're available Wednesday.

Do you have a time in mind?

Cordially,
DGS

David G. Sarvadi
Attorney-at-Law
tel: 202-434-4249 fax 202-434-4646 | sarvadi@khlaw.com
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that will cover OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at



Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

To: Grantham, Nancy[Grantham.Nancy@epa.gov]
Cc: Knapp, Kristien[Knapp.Kristien@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Smith, Loren (OST)
Sent: Mon 3/13/2017 5:43:46 PM
Subject: Re: Word version mte

Thank you all!

Sent from my iPhone

On Mar 13, 2017, at 1:39 PM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:

Please find attached, the word version.

Thanks

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

-----Original Message-----

From: Knapp, Kristien
Sent: Monday, March 13, 2017 1:28 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>
Subject: Word version mte

<CAFE-FINAL FINAL-joint-notice-DOT-EPA (002).docx>

Sent from my iPhone

To: Flynn, Mike[Flynn.Mike@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Hull, George[Hull.George@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Kenny, Shannon[Kenny.Shannon@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Gaines, Cynthia
Sent: Wed 3/1/2017 9:58:09 PM
Subject: Daily Reading File: March 1, 2017
[Daily Reading File.3.1.17.pdf](#)



Correspondence Management System

Control Number: AX-17-000-5055

Printing Date: March 01, 2017 02:38:03



Citizen Information

Citizen/Originator: Stouffer, Sue

Organization: Stouffer's Auction & Real Estate Company
Address: 23506 Ringgold Pike, Smithsburg, MD 21783

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5055 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Mar 15, 2017 **# of Extensions:** 0
Letter Date: Feb 21, 2017 **Received Date:** Feb 27, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: RA-R3-Regional Administrator - Region 3 **Signature Date:** N/A
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Congrats and Concerns - Administrator on your new job and State of Maryland ordered us to plant trees and grasses taking away from orchards and dairy farming in the Chesapeake Bay area
Instructions: RA-R3-Prepare draft response for signature by the Regional Administrator for Region 3
Instruction Note: N/A
General Notes: N/A
CC: N/A

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Brenda Salvador	OEX	R3	Mar 1, 2017	Mar 15, 2017	N/A
Instruction: RA-R3-Prepare draft response for signature by the Regional Administrator for Region 3					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
-----------	--------	--------	------



\$touffer's Auction & Real Estate Co.



February 21, 2017

Mr. Scott Pruitt
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code 1101A
Washington, DC 20460

Dear Mr. Pruitt,

Congratulations on your new and very critical position! We have a situation in Western Maryland that has been the result of an EPA directive which we desperately need your assistance on.

We are being told by the State of Maryland that the EPA has put out a directive to plant trees and grasses to clean the Chesapeake Bay; however this is taking agricultural ground out of production for our neighbors in dairy farming and orchards.

In addition it may take away someone's home that has been residing there over 40 years.

I have enclosed some pictures and a copy of the letter that I sent President Trump for assistance.

I know that is not a big deal in the realm of the US problems, but it is for those of us living thru this. While I am not affected directly on my land, it will be directly across the road from me which will bring in unwanted wildlife and may cause driving issues with deer that are prevalent in our area.

Please help!

Sincerely

Sue Stouffer
Sue Stouffer

23506 Ringgold Pike
Smithsburg, MD 21783
301-791-6896
www.stouffersauctionco.com

RECEIVED
OFFICE OF THE
EXECUTIVE SECRETARIAT

2017 FEB 27 PM 3:07



Correspondence Management System

Control Number: AX-17-000-5067

Printing Date: March 01, 2017 01:50:04



Citizen Information

Citizen/Originator: DeWine, Mike

Organization: Ohio Attorney General
Address: 30 E. Broad Street, Columbus, OH 43215

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5067
Status: Pending
Due Date: Mar 15, 2017
Letter Date: Feb 22, 2017
Addressee: AD-Administrator
Contact Type: LTR (Letter)
Signature: AD-Administrator
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - National Emission Standards for Hazardous Air Pollutants: Ferroalloys Production 80 Fed. Reg. 37,366 (June 30, 2015) and 82 Fed. Reg. 5401 (Jan. 18, 2017)
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: Kristien Knapp - AO-IO
OPA - Office of Public Affairs
R3 - Region 3 - Immediate Office
R5 - Region 5 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
StephanieN Brown	OEX	OAR	Mar 1, 2017	Mar 15, 2017	N/A
	Instruction: DX-Respond directly to this citizen's questions, statements, or concerns				
Barbara Matthews	OAR	OAR-OAQPS	Mar 1, 2017	Mar 13, 2017	N/A
	Instruction: DX - DIRECT REPLY -- PREPARE RESPONSE FOR THE SIGNATURE OF THE DIVISION DIRECTOR.				

Supporting Information

Supporting Author: N/A



MIKE DeWINE

★ OHIO ATTORNEY GENERAL ★

Administration
Office 614-466-4320
Fax 614-466-5087

30 E. Broad Street, 17th Floor
Columbus, OH 43215
www.OhioAttorneyGeneral.gov

February 22, 2017

Scott Pruitt
Administrator
Environmental Protection Agency
Office of the Administrator
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

**RE: National Emission Standards for Hazardous Air Pollutants: Ferroalloys Production
80 Fed. Reg. 37,366 (June 30, 2015) and 82 Fed. Reg. 5401 (Jan. 18, 2017)**

Dear Administrator Pruitt:

As the chief law officer for the State of Ohio, I ask you to employ all available measures to ensure that a U.S. EPA rulemaking does not cripple our country's ferroalloys industry. Eramet Marietta, Inc., located in Marietta, Ohio and Felman Production, LLC, located in Letart, West Virginia, are the only two remaining producers of manganese ferroalloys for the steel industry in the United States. These companies face intense competition from foreign producers, and the National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production only compound these concerns. 80 Fed. Reg. 37,366 (June 30, 2015) and 82 Fed. Reg. 5401 (Jan. 18, 2017) (on reconsideration). There is no doubt that protecting the public health from hazardous air pollution is critical, but a proper balance should be struck to prevent job losses, let alone the risk of closure to local businesses. Eramet will need to reduce its production and staff by half to comply with the overburdening rulemaking. We ask for your assistance to avoid these losses.

The Ohio company, Eramet, predicts it will eliminate 90 jobs due to this rulemaking. The Company, however, is committed to reconstructing the largest unit of its operation for the sake of environmental compliance. By taking this measure to comply, the Company will save half of its staff and production. Unfortunately, Eramet does not have the resources to update the remaining operational units, so it predicts that the rulemaking will eliminate nearly 90 jobs and the other half of its production. Eramet may never fully recover. The effect of such a loss will extend beyond Eramet and the ferroalloys industry as that industry supports major U.S. steel companies including U.S. Steel, AK Steel, TimkenSteel, and ArcelorMittal. American steel is vital to our national security, and many of these companies have ties to Ohio and our local economy. Without Eramet's supply, these steel companies will encounter unpredictable costs and their own production risks. Simply put, the harms introduced by this rulemaking are severe and far-reaching.

Eramet and Felman expressed their concerns with the rulemaking at various stages of the public comment process. In 2015, the Agency through its Acting Administrator responded to a letter from Senators Capito, Manchin, Portman, and Brown, and Representatives McKinley, Johnson, Jenkins, and Mooney. In its response, U.S. EPA declined to designate the rulemaking as a “major rule” for purposes of the Congressional Review Act. At that time, the companies also raised concerns with the two-year deadline to achieve full compliance as it was not sufficient time to make the necessary improvements to their operations. The former administration, in the same written response, pledged to consider an extension but never approved one.

Eramet even challenged the 2015 final rule in the D.C. Circuit Court of Appeals. *Eramet Marietta, Inc. v. EPA*, Case No. 15-1296. That appeal is currently stayed after Eramet petitioned U.S. EPA to reconsider the 2015 rule, and the former administration agreed to reevaluate a few provisions. Upon reconsideration, U.S. EPA withdrew its demand that Felman install a new monitoring system, but the final reconsideration rule, published January 18, 2017, imposes all of the other onerous requirements. Significantly, the former administration finalized this rulemaking less than two full days before the official change in the administration. Now that the reconsideration is final, the stay for Eramet’s challenge before the D.C. Circuit may be lifted by the parties.

The companies were not the only stakeholders to participate in the public comment process. In 2014, the State of Ohio through its environmental protection agency addressed the rulemaking’s projected capital costs, \$25 million for Eramet and \$12.4 million for Felman. The comment letter alerted the former administration to the true risk of plant closure at the hands of this burdensome regulation and foreign competition.

Again in 2016 for the reconsideration of the rulemaking, Ohio EPA exposed the unnecessary expenses associated with quarterly emissions testing and digital-camera monitoring. The monitoring demands, in particular, are troubling because U.S. EPA replaced its tried-and-true method with a more expensive and unproven method. It is unusual and problematic for U.S. EPA to impose any requirement without proper scrutiny. The new method’s uncertainties cast doubt as to whether the companies will ultimately achieve environmental compliance, which in turn, discourages the investments necessary to upgrade all of the operational units. To date, there is only one supplier of the digital-camera-monitoring technology, which invites an array of concerns from pricing to quality control. Ohio EPA warned that these requirements may increase operating costs in the highly competitive ferroalloys market without any benefits to the environment or the public health.

The former administration sidestepped these comments and proceeded with a rulemaking that jeopardizes not only the survival of Ohio and West Virginia companies but an American industry and potentially our national security in the ability to make steel in the United States from U.S. manufacturers. We should not accept the conclusion that protecting the public health on the one hand and ferroalloy jobs on the other are mutually exclusive. I ask you to take necessary action to prevent this loss.

We appreciate your consideration and prompt attention to this critical matter, and look forward to working with you.

Very respectfully yours,

A handwritten signature in black ink that reads "Mike DeWine". The signature is written in a cursive, flowing style.

Mike DeWine
Ohio Attorney General



Correspondence Management System

Control Number: AX-17-000-5159

Printing Date: March 01, 2017 03:34:36



Citizen Information

Citizen/Originator: Citizen Name/Ex. 6

Organization: N/A

Address:

Personal Address/Ex. 6

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5159

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Mar 16, 2017

of Extensions: 0

Letter Date: Feb 20, 2017

Received Date: Feb 28, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: AD-Administrator

Signature Date: N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Restructuring of the criminal enforcement program

Instructions: AD-Prepare draft response for the Administrator's signature

Instruction Note: N/A

General Notes: OEX will be working with Immediate Office personnel in crafting the response per Brian Hope (jl)

CC: N/A

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	Anne Hargrove	Mar 1, 2017	Mar 16, 2017	N/A
Instruction: AD-Prepare draft response for the Administrator's signature					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
Jacqueline Leavy	OEX	Control Created	Mar 1, 2017

Citizen Name/Ex. 6

Personal Address/Ex. 6

RECEIVED
2017 FEB 28 AM 11:56

OFFICE OF THE
EXECUTIVE SECRETARIAT
February 20, 2017

Administrator Scott Pruitt
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt:

I am writing to you today for several reasons. First, I wish to congratulate you on your recent appointment to the position of EPA Administrator. I am a firm supporter of President Trump and I am confident that with your selection as Administrator, the EPA will begin the process of effective restructuring.

I am also writing to you in regards to the EPA's criminal enforcement program which is administered through the *Office of Criminal Enforcement, Forensics and Training* (OCEFT). I had served within this Office as the *Director of Homeland Security* and later as the *Director of Field Operations* under President Bush and thereafter under President Obama. After establishing an effective criminal enforcement program in New York, I was brought into the EPA for the sole purpose of managing the Administrator's Protection Detail and bringing the EPA's Criminal Enforcement and Homeland Security programs up to the high standards established by numerous state and local governments throughout our country. Although much progress was made under President Bush's tenure, all of our efforts were forcibly ceased and accomplishments reversed by those senior managers hired under the recent Administration.

As you are aware by now there is a large group of *personal-agenda-driven-activist* remaining in the Agency. Many of these remaining individuals had been hired into the *Senior Executive Service* as senior managers under the Obama administration. Speaking from my internal Agency experience as an enforcement Director in OCEFT, I can assure you that these select individuals will continue to undermine your efforts to redirect the course of the Agency. During my own Agency tenure, I continually tried to challenge those who would create and present questionable data that supported their personal political agendas. My continued challenge to their veracity was met with great resistance and vindictiveness resulting in my departure from the Agency. I fully expect these individuals to attempt to actively pursue their own agendas under your Administration.

After serving in both local and federal government senior management homeland security and criminal environmental enforcement positions, I feel qualified to unequivocally state that many of the EPA's enforcement efforts may be best left to each individual state to manage. Should you wish to discuss this further or should I be able to assist your efforts in any way please do not hesitate to contact me. I may be reached at

Personal Phone/Ex. 6 I look forward to your great success at the EPA.

Best Regards,

Citizen Name/Ex. 6



Correspondence Management System

Control Number: AX-17-000-5167

Printing Date: March 01, 2017 02:24:17



Citizen Information

Citizen/Originator: Watumull, JD

Organization: Watumull Properties Corp.
Address: 307 Lewers Street, 6th Floor, Honolulu, HI 96815

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5167 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Mar 16, 2017 **# of Extensions:** 0
Letter Date: Feb 17, 2017 **Received Date:** Feb 28, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: RA-R10-Regional Administrator **Signature Date:** N/A
- Region 10
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Portland Harbor Superfund Site
Instructions: RA-R10-Prepare draft response for signature by the Regional Administrator for Region 10
Instruction Note: N/A
General Notes: N/A
CC: Eileen Naples - AO-IO
OLEM - Office of Land and Emergency Management
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	R10	Mar 1, 2017	Mar 16, 2017	N/A
Instruction: RA-R10-Prepare draft response for signature by the Regional Administrator for Region 10					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
-----------	--------	--------	------

WATUMULL Properties Corp.

RECEIVED

2017 FEB 28 AM 11:55

OFFICE OF THE
EXECUTIVE SECRETARIAT

February 17, 2017

Scott Pruitt
EPA Administrator
Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Portland Harbor Superfund Site

Dear Mr. Pruitt,

I am writing on a matter that is affecting our family business. We own a building that we purchased on November 11, 1993 that we lease to Northwest Paper Box, a cardboard box maker. Our building has been severely impacted by the Portland Harbor Superfund as the building is adjacent to the harbor.

While none of the previous or current occupants of the facility contributed to the pollution of the waters, we have had to spend over \$100,000 in legal and environmental studies.

In 2016 the EPA came up with a plan to clean the harbor for \$746 million. While this is a very large sum of money, the affected parties in Portland were just happy to have a plan. However it now appears that the EPA wants to spend \$1.05 billion instead and take 13 years to complete.

This amount of money to clean up a harbor that no one should be swimming in or eating fish caught in the harbor is absurd. Also to punish the owners of the surrounding land while we had nothing to do with the pollution is absurd.

I hope that as you review superfund cases that you are able to restore common sense to this project.

Sincerely yours,



JD Watumull



Correspondence Management System

Control Number: AX-17-000-5172

Printing Date: March 01, 2017 10:36:12



Citizen Information

Citizen/Originator: Steenberg, Dale G.

Organization: Greater Cheyenne Chamber of Commerce

Address: One Depot Square, 121 West 15th Street, Cheyenne, WY 82001

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5172

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Mar 16, 2017

of Extensions: 0

Letter Date: Feb 17, 2017

Received Date: Feb 28, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: AA-OAR-Assistant Administrator
- OAR

Signature Date: N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Concern regarding the proposed denial to move the Point of Obligation under the Renewable Fuel Standard Program; Docket ID: EPA-HQ-OAR-2016-0544

Instructions: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR

Instruction Note: N/A

General Notes: Please prepare an acknowledgement letter (jl)

CC: Kristien Knapp - AO-IO
OPA - Office of Public Affairs
R8 - Region 8 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OAR	Mar 1, 2017	Mar 16, 2017	N/A
Instruction: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

**GREATER
CHEYENNE**
CHAMBER OF COMMERCE

RECEIVED

2017 FEB 28 AM 11:55

OFFICE OF THE
EXECUTIVE SECRETARIAT

February 17, 2017

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Docket ID: EPA-HQ-OAR-2016-0544

Dear Sir or Madam:

On behalf of the Cheyenne Chamber of Commerce I want to express our concern regarding the Environmental Protection Agency's proposed denial to move the Point of Obligation under the Renewable Fuel Standard Program (RFS).


We believe the current construct of the RFS program creates a punitive, unintended consequence for merchant refiners, like the one here in Cheyenne. This has resulted in extremely high cost of compliance since merchant refiners have limited ability to blend biofuels mandated by EPA, and therefore must acquire credits on the open market to certify blending. The costs of these credits have grown exponentially in recent years and now are often the largest expense with no control.

This cost for merchant refiners diminishes the capitol available to invest in facilities, grow employment and add to our local economy. Cheyenne's economy has been challenged during the downturn in the agriculture and energy markets, and high paying, stable careers in the manufacturing industry – like those at HollyFrontier Cheyenne Refining LLC – are more critical than ever.

We ask that EPA act quickly to begin a rulemaking which will move the point of obligation further downstream in the supply chain. Doing so will make the program more equitable and embolden merchant refiners that are a crucial component of our nation's energy infrastructure and source of more than 400 jobs here in Cheyenne.

Thank you for your consideration in this matter.

Sincerely,



Dale G. Steenbergen

President/CEO

Greater Cheyenne Chamber of Commerce



Correspondence Management System

Control Number: AX-17-000-5239

Printing Date: March 01, 2017 11:30:17



Citizen Information

Citizen/Originator: Hendricks, Al

Organization: Volcano Partners LLC

Address: 350 Fifth Avenue, New York, NY 10118

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5239

Alternate Number: 9500 1124 7410 7055 1048 71

Status: Pending

Closed Date: N/A

Due Date: Mar 16, 2017

of Extensions: 0

Letter Date: Feb 21, 2017

Received Date: Mar 1, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: AA-OLEM-Assistant

Signature Date: N/A

Administrator-OLEM

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Toxic and Superfund Material Destruction

Instructions: AA-OLEM-Prepare draft response for signature by the Assistant Administrator for OLEM

Instruction Note: N/A

General Notes: N/A

CC: Eileen Naples - AO-IO
OPA - Office of Public Affairs
R2 - Region 2 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OLEM	Mar 1, 2017	Mar 16, 2017	N/A
Instruction: AA-OLEM-Prepare draft response for signature by the Assistant Administrator for OLEM					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
-----------	--------	--------	------



VOLCANO PARTNERS LLC

350 Fifth Avenue, Suite 5310, New York, NY 10118

REGISTRATION

2017 FEB 28 PM 2:34

OFFICE OF THE
EXECUTIVE SECRETARIAT

Email: Pruitt.Scott@epa.gov

February 21, 2017

Scott Pruitt, EPA Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

TOXIC AND SUPERFUND MATERIAL DESTRUCTION

Dear Mr. Pruitt:

Congratulations with your Senate Confirmation as EPA Administrator. After many years of research funded by the EPA and Army Corps of Engineers, (*with management support provided by the DOE's Brookhaven National Laboratory*) a one-step manufacturing process was developed that permanently removes toxic materials from the environment and creates beneficial-use products. The process was labeled "Cement-Lock".

Cement-Lock is a process that creates sustainable beneficial-use products that comply with the EPA's preferred treatment under CERCLA Title 121. The process provides for the permanent removal from the environment of toxic materials that present health risks to the public, achieving a DRE of 99.9999%. It converts any toxic material (*organic and/or inorganic*) into a valuable non-hazardous pozzolan called "Ecomelt", useful in the construction trades. The production of electricity, purified water and steam are residual benefits available to communities from Cement-Lock manufacturing operations.

The Cement-Lock technology meets the EPA's regulatory requirements for leachability under TCLP testing. It also meets the EPA's CERCLA and RCRA clean-up standards for organic contaminants including dioxins, PCBs and pesticides / herbicides. Air Pollution Control equipment used in Cement-Lock operations meets or exceeds the EPA's 2014 compulsory air quality regulations.

A senior team member of Volcano Partners includes Robert (Bob) Fabricant, a leader in environmental legislation and compliance. Bob has been General Counsel of the U.S. EPA managing more than 300 attorneys; and managed more than 20 attorneys as Chief Counsel (*and Deputy Chief Counsel*) to the Office of the Governor in New Jersey.

With the implementation of the Cement-Lock process, storage of hazardous waste in landfills, CDFs and CADs are no longer required. Corporate liability may be eliminated, or at least substantially reduced, allowing businesses to better invest their economic resources for new product development, research programs and hiring more workers. Economic value is created instead of investing capital into prolonged and unnecessary litigation.

Cement-Lock has been called a "Game-Changing" technology by the Passaic River Coalition and the EPA's advisory council, NACEPT. It may be implemented on a national basis at all Superfund sites. As the new EPA Administrator with a mandate from President Trump to focus upon growing American businesses, rebuilding the Country's infrastructure, eliminating wasteful spending from EPA regulation & litigation, hiring new workers and stimulating the economy, we wanted you to be aware of this process with multiple environmental benefits that significantly reduces the cost of cement. We are pleased to meet with you and your staff to share the application of this new, cost effective technology that has tremendous application within the U.S. as well as other global communities. Please visit our web site for more information and let us know whether you might have any questions.

Regards,

A handwritten signature in dark ink, appearing to read 'Al Hendricks', with a stylized, flowing script.

Al Hendricks
Chairman and CEO

Ph: (407) 492-9731

Email: al.hendricks@cement-lock.com



Correspondence Management System

Control Number: AX-17-000-5253

Printing Date: March 01, 2017 03:08:58



Citizen Information

Citizen/Originator: Strickler, James R.J.

Organization: State of New Mexico House of Representatives
Address: 2204 N. Santiago Avenue, Farmington, NM 87401

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5253 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Mar 15, 2017 **# of Extensions:** 0
Letter Date: Feb 22, 2017 **Received Date:** Feb 28, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: AA-OAR-Assistant Administrator **Signature Date:** N/A
- OAR
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Application of the so-called "Haze Rule" to San Juan Generating Station
Instructions: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR
Instruction Note: N/A
General Notes: N/A
CC: Kristien Knapp - AO-IO
OCIR - Office of Congressional and Intergovernmental Relations
OGC - Office of General Counsel -- Immediate Office
OP - Office of Policy
OPA - Office of Public Affairs
R6 - Region 6 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

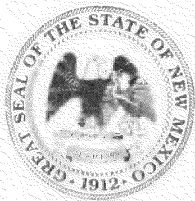
Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
StephanieN Brown	OEX	OAR	Mar 1, 2017	Mar 15, 2017	N/A
Instruction: AD-Prepare draft response for the Administrator's signature					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			



State of New Mexico
House of Representatives
Santa Fe

JAMES R. J. STRICKLER

R - San Juan
District 2

2204 N. Santiago Avenue
Farmington, NM 87401

Cell Phone: **Personal Phone/Ex. 6**

Home Phone: **Personal Phone/Ex. 6**

E-mail: **Personal Email/Ex. 6**

COMMITTEES:

Energy, Environment & Natural Resources
Taxation & Revenue

February 22, 2017

Administrator Scott Pruitt
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1101A
Washington, DC 20460

RECEIVED
2017 FEB 28 PM 4:14
OFFICE OF THE
EXECUTIVE SECRETARIAT

Dear Mr. Administrator,

I am writing you today regarding the application of the so-called "Haze Rule" to the San Juan Generating Station (SJGS), a coal fired power plant located in San Juan County, NM.

Based on a document titled "Term Sheet Between the U.S. Environmental Protection Agency, Public Service Company of New Mexico and the State of New Mexico," dated 15 February 2013, the Public Service Company of New Mexico (PNM) has agreed to retire two of the four SJGS units by the end of 2017, and perform other upgrades to the SJGS. This "Term Sheet" was subsequently codified in a Settlement Agreement that PNM submitted to the NM Public Regulation Commission in 2015.

Retirement of SJGS Units 2 and 3 will reduce the generating capacity of the plant by over 40%. This is not in the best interests of NM ratepayers or the four corners region. SJGS is a regional "base load" power plant: its full generating capacity should be maintained as a regional asset.

Instead of retiring Units 2 and 3 at the end of 2017, PNM should retain them in "cold standby" condition with the option of re-starting the two units at a later time when there is an increase

Page 2:

in demand for "base load" electricity. This option would retain an important regional asset without disturbing PNM's near-term power generation and power purchasing plans.

PNM has made considerable improvements and upgrades at SJGS over the years, and it should be allowed to retain the flexibility to continue operating all four units in compliance with current laws and regulations.

I request that PNM, the State of NM, and EPA begin immediate negotiations to revise the settlement agreement to allow Units 3 and 4 to remain in operation.

Please contact me with questions.

Regards,



James R. J. Strickler

Cc: The Honorable Susana Martinez, Governor

The Honorable Tom Udall, US Senator

The Honorable Martin Heinrich, US Senator

The Honorable Michell Lujan Grisham, US Representative

The Honorable Steve Pearce, US Representative

The Honorable Ben R. Lujan, US Representative

City of Bloomfield

City of Aztec

City of Farmington

Village of Kirtland

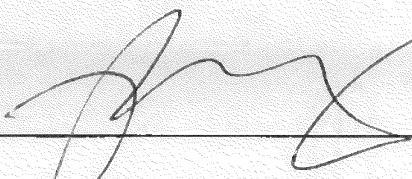
Four Corners Economic Development Commission

San Juan County Commission

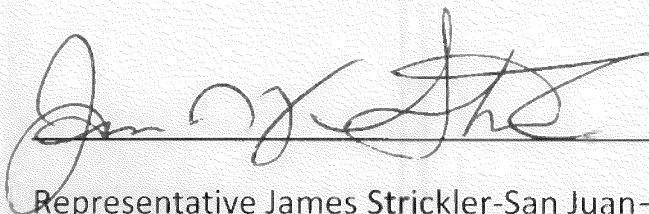
Endorsed by:



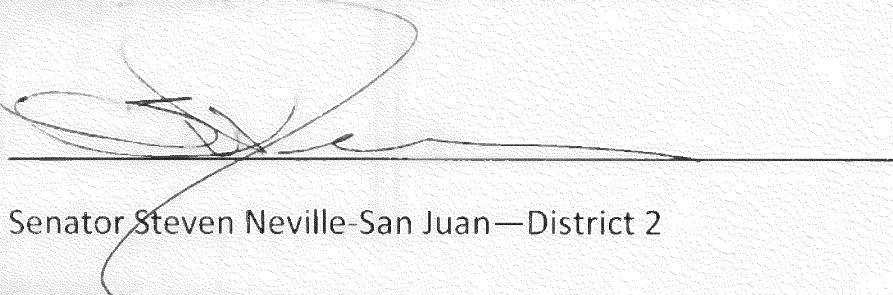
Representative Sharon Clahchischilliage-San Juan -- District 4



Representative Rod Montoya-San Juan -- District 1



Representative James Strickler-San Juan— District 2

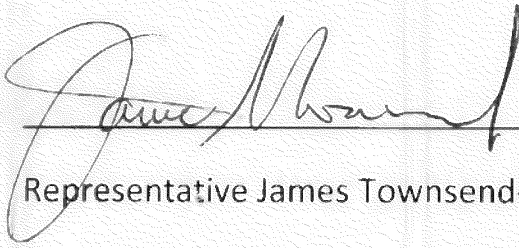


Senator Steven Neville-San Juan—District 2

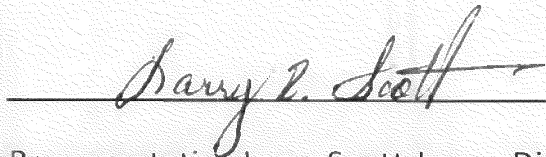


Senator William "Bill" Sharer-San Juan—District 1

Paul Bandy. dist 3
PAUL BANDY



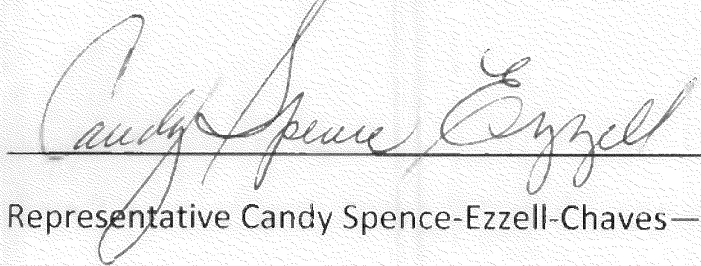
Representative James Townsend-Chaves, Eddy & Otero—District 54



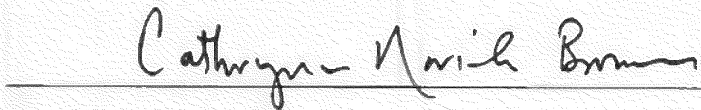
Representative Larry Scott-Lea— District 62



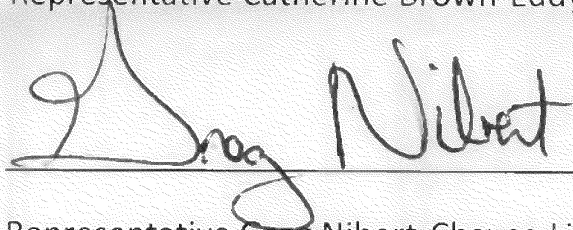
Representative David Gallegos-Lea—District 61



Representative Candy Spence-Ezzell-Chaves—District 58



Representative Catherine Brown-Eddy—District 55



Representative Greg Nibert-Chaves-Lincoln—District 59

To: Schnare, David[schnare.david@epa.gov]
From: Kime, Robin
Sent: Mon 3/6/2017 7:19:45 PM
Subject: WOTUS Meeting with OW Wednesday

Hi

I hope you are well. Samantha asked me to see if you wouldn't mind if she joined in Wednesday's WOTUS meeting with OW.

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Benton, Donald
Sent: Thur 3/2/2017 7:21:58 PM
Subject: FW: Petition to EPA for Reconsideration of the HHWQS Rule for Washington State
removed.txt
2017-02-15 WTR Petition for Rulemaking FINAL.pdf

Another petition on WA water Quality Standards

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Chris McCabe [mailto:chris@nwpulpanpaper.org]
Sent: Thursday, March 2, 2017 12:55 PM
To: Benton, Donald <benton.donald@epa.gov>
Subject: Petition to EPA for Reconsideration of the HHWQS Rule for Washington State

Dear Mr. Benton:

For your information, please find attached a Petition for Reconsideration of the EPA Washington human health water quality standards (HHWQS) rule. This Petition was filed with the EPA headquarters Docket Center on February 21, 2017. A CD with the supporting footnote documentation was sent via regular mail under separate cover.

And please recall that this same issue is currently pending in Idaho and Maine, where NWPPA member mills also have facilities.

Please contact me at the numbers below with any questions.

Thank you,

Chris McCabe

Christian M. McCabe, J.D.

Executive Director

Northwest Pulp & Paper Association

212 Union Ave. SE, Suite 103

Olympia, WA 98501

Personal Phone/Ex. 6	(work)
	(mobile)

www.nwpulppandpaper.org

@nwppa

NWPPA

Please note: It's okay to print this e-mail. Paper is a plentiful, biodegradable, renewable, recyclable, sustainable product made from trees that supports our economy by providing jobs and income for millions of Americans. Working forests are good for the environment and provide clean air and water, wildlife habitat and carbon storage. Thanks to improved forest management, we have more trees in America today than we had 100 years ago.

PETITION TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Petition for Reconsideration of EPA's Partial Disapproval of Washington's Human Health Water Quality Criteria and Implementation Tools submitted by the State of Washington on August 1, 2016, and Repeal of the Final Rule Revision of Certain Federal Water Quality Standards Applicable to Washington, 81 Fed. Reg. 85,417 (Nov. 28, 2016)

Submitted February 21, 2017 to the Administrator and Acting Assistant Administrator of the Office of Water, U.S. Environmental Protection Agency

Northwest Pulp & Paper Association, American Forest and Paper Association, Association of Washington Business, Greater Spokane Incorporated, Treated Wood Council, Western Wood Preservers Institute, Utility Water Act Group and Washington Farm Bureau submit this petition to the Administrator of the U.S. Environmental Protection Agency ("EPA") under 5 U.S.C. § 553(e) for the following actions: reconsideration and approval of the State of Washington Human Health Water Quality Criteria and Implementation Tools submitted to the EPA on August 1, 2016, and either repeal or withdrawal of the Revisions of Certain Federal Water Quality Standards Applicable to Washington published at 81 Fed. Reg. 85,417-85,437 (Nov. 28, 2016) ("EPA Final Rule").

I. SUMMARY

On November 15, 2016, EPA wrongfully disapproved 143 human health criteria submitted by the State of Washington to EPA on August 1, 2016. EPA is required under section 303(c)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1313(c)(3), to approve state water quality standards ("WQS") if they meet the requirements of the CWA. EPA regulations specify that state standards for toxics must be protective of beneficial uses, 40 C.F.R. § 131.11(a)(2), and derived using EPA guidance or other scientifically defensible methods. 40 C.F.R. § 131.11(b). In each instance the Washington state-submitted standards are consistent with EPA guidance and the best available science, and therefore comply with the CWA. In disapproving those standards, EPA improperly usurped the primary role of the state to make risk management decisions for human health water quality criteria as well as EPA's own long-standing guidance.

EPA has imposed on the people of the state of Washington arbitrary and capricious human health water quality criteria that will likely be devastating to our local communities and businesses. EPA has sought to advance its own agenda with no basis in and in disregard of the Clean Water Act, EPA's own regulations and guidance, and long established understanding of science and public health.

In pursuit of its political agenda EPA ignored substantial and overwhelming evidence that its final human health criteria afford no benefit to public health over the Washington-submitted standards, while imposing potentially billions of dollars in additional regulatory and compliance expenses. We respectfully request that EPA reconsider the human health water quality criteria adopted by the State of Washington and either repeal or withdraw the EPA Final Rule. As

discussed below, while Petitioners believe that EPA pushed the State of Washington to adopt criteria that are far more stringent than what is required under the CWA, EPA should now respect the state's prerogative under the CWA to make risk management decisions in deriving human health water quality criteria.

II. RECONSIDERATION AND APPROVAL OF WASHINGTON HUMAN HEALTH WATER QUALITY CRITERIA

A. Introduction

The Washington Department of Ecology ("Ecology") submitted the State of Washington Human Health Water Quality Criteria and Implementation Tools to EPA on August 1, 2016. The new and revised WQS were adopted by Ecology on August 1, 2016, and included for the first-time adoption of human health criteria into Washington's WQS. The Ecology submission also included new and revised language on implementation tools: variances, compliance schedules, intake credits, and combined sewer overflow ("CSO") treatment plants. These new and revised criteria and provisions are located in the Water Quality Standards for Surface Waters of the State of Washington (Chapter 173-201A WAC):

Human Health Criteria and Other Narrative Revisions (WAC 173-201A-240)

Variances (WAC 173-201A-420)

Intake Credits (WAC 173-201A-460)

Compliance Schedules (WAC 173-201A-510(4))

Implementation Clarification for Combined Sewer Overflows (CSO) Treatment Plants (WAC 173-201A-510(6))

EPA initially established Washington's human health criteria for toxic pollutants in the 1992 National Toxics Rule ("NTR").¹ Ecology's August 1, 2016 submittal contains 192 new human health criteria for 97 priority pollutants that are applicable to all surface waters of the state. EPA should take action under CWA § 303(c), 33 U.S.C. § 1313(c), to approve the human health criteria submitted by Washington because the criteria are based on sound scientific rationale and protective of applicable designated uses in Washington.

B. EPA is Required to Approve State Water Quality Standards that are Consistent with EPA Guidance and Scientifically Defensible Methods

Congress established a federal-state partnership for implementing the CWA. *PUD No. 1 of Jefferson County v. Washington Dept. of Ecology*, 511 U.S. 700, 703-04, 114 S.Ct. 1900 (1994); *City of Abilene v. U.S. E.P.A.*, 325 F.3d 657, 659 (5th Cir. 2003) (quoting *Arkansas v. Oklahoma*, 503 U.S. 91, 101, 112 S.Ct. 1046 (1992)). The U.S. Supreme Court has described the CWA as "a program of cooperative federalism." *New York v. U.S.*, 505 U.S. 144, 167, 112 S.Ct.

¹ 57 Fed. Reg. 60,848 (Dec. 22, 1992)(00768-847); 40 CFR Part 131.36 (as amended in 1999 for PCBs).

2408 (1992). States are principally responsible for implementing much of the statute. 33 U.S.C. § 1251(b) (“It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and right of States to prevent, reduce, and eliminate pollution.”).

The CWA accordingly assigns to the states the primary authority for adopting water quality standards. 33 U.S.C. § 1313(a), (c). State water quality standards submitted to EPA must protect all designated beneficial uses, be based on sound scientific rationale and contain sufficient parameters or constituents to protect the designated uses. 40 C.F.R. § 131.11(a). When establishing criteria, states are encouraged to base numeric values on guidance adopted by EPA pursuant to CWA § 304(a) (“304(a) Guidance”); 304(a) Guidance modified to reflect site-specific conditions; or other scientifically defensible methods. 40 C.F.R. § 131.11(b). The standards must include the six elements set out in 40 C.F.R. § 131.6, including use designations consistent with the CWA, the methods used and analyses conducted to support the WQS, and water quality criteria sufficient to protect the designated uses.²

Once adopted by a state, EPA’s role is to review the standards for consistency with the CWA, and either approve or disapprove the standards. 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. § 131.5(a). EPA’s review is not open-ended or discretionary. Rather, it reviews the standards with reference to five different factors set out in 40 C.F.R. § 131.5(a). If EPA determines that the standards are consistent with these factors, EPA must, within 60 days of the date of submission, approve the standards. 33 U.S.C. § 1313(c)(3); 40 C.F.R. § 131.5(b). If EPA determines that the state-submitted standards are not consistent with these five factors, then EPA has 90 days in which to notify the state and specify the changes necessary to meet the CWA’s requirements. *Id.* If the state fails to adopt the changes within 90 days of notification by the EPA, then EPA must promulgate a water quality standard for the state. 33 U.S.C. §§ 1313(c)(3), (c)(4).

C. The State of Washington Used Appropriate Inputs to Derive Its Human Health Water Quality Criteria

EPA’s 2000 Human Health Methodology³ (“2000 Human Health Methodology”) provides states with CWA 304(a) Guidance for deriving human health criteria for toxic pollutants. For each input used in the criteria calculation, EPA provides a national recommended value and guidance on specific adjustments that may be necessary to reflect local conditions and protect the most highly exposed populations. As part of evaluating whether Washington’s criteria protect the applicable designated uses, EPA should review Washington’s selected input values by evaluating the scientific rationale for each input and whether there was Washington-specific information relative to each value that should be considered in the review.

² 40 C.F.R. § 131.20(c) further delineates the information, analyses, methodologies and policies that states must submit to EPA along with the water quality standards.

³ EPA. *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health*. U.S. Environmental Protection Agency, Office of Water, Washington, D.C. EPA-822-B-00-004 (2000)(00074-0258).

i. Inputs to Washington's Human Health Criteria

1. Cancer Risk Level

Ecology derived human health criteria for carcinogens using a chemical-specific cancer risk level of one-in-one million (10^{-6}) as specified in WAC 173-201A-240, except for the chemical-specific risk level for PCBs of 2.3×10^{-5} . Ecology's selection of a 10^{-6} cancer risk level and separate chemical specific risk level for PCBs is consistent with the EPA's 2000 Human Health Methodology.⁴

2. Cancer Slope and Reference Dose

Ecology used the Cancer Slope Factors ("CSFs") and Reference Dose ("RfDs") that correspond to EPA's most recent 304(a) recommended criteria with two exceptions. For arsenic and 2,3,7,8-TCDD ("dioxin"), the state has used alternative approaches based on scientifically defensible methods that are consistent with the CWA and EPA guidance.

3. Exposure Assumptions

a. Fish Consumption Rate

Ecology used an FCR of 175 g/day to derive the Washington human health criteria. Ecology describes this decision as a Washington-specific risk management choice to use a value that: (1) is representative of state-specific information; and (2) was determined through a process that included consideration of the EPA guidance and precedent, and input from multiple groups of stakeholders.⁵ Specifically, in selecting a FCR of 175 g/day, Ecology stated: "Since Washington has a strong tradition of fish and shellfish harvest and consumption from local waters, and within-state survey information indicates that different groups of people harvest fish both recreationally and for subsistence (Ecology, 2013), *Ecology has made the risk management decision to base the fish consumption rate used in the HHC equation on "highly exposed populations,"* which include, among other groups, the following: tribes, Asian Pacific Islanders (API), recreational and subsistence fishers, immigrant populations."⁶

EPA's 2000 Human Health Methodology recognizes the variability of FCRs among population groups and by geographic region. In employing the 2000 Human Health Methodology to derive criteria, EPA urges states and tribes to use a fish intake level derived from local or regional data instead of the national default recommendation in order to ensure the fish intake level chosen is protective of highly exposed subpopulations. The 2000 Human Health Methodology includes a four-preference hierarchy concerning the use of fish consumption rate

⁴ *Id.*

⁵ Ecology, *Washington State Water Quality Standards: Human health criteria and implementation tools, Overview of key decisions in rule amendment*, at 27 (Aug. 2016); Ecology, *Fish Consumption Rates Technical Support Document* (Jan. 2013)(05398-5591).

⁶ See n.5, Ecology Overview, at 28.

data: (1) use of local data; (2) use of data reflecting similar geography/population groups; (3) use of data from national surveys; and (4) use of the EPA's default intake rate.

EPA should defer to the FCR and basis for the value articulated by Ecology. Ecology's approach is consistent with EPA's recommendation to use scientifically sound regional and local fish consumption data. EPA should acknowledge that while some tribes within the state have reportedly viewed 175 g/day as a compromise minimum value for current criteria-setting purposes, only so long as it is coupled with a cancer risk level of 10^{-6} that there is no treaty right or scientific basis for establishing 10^{-6} risk level as a minimum risk level necessary to protect beneficial use of state waters for tribal members.

EPA should accordingly approve of Washington's decision to derive the human health criteria using a FCR of 175 g/day and at the chemical specific cancer risk levels applied by the state, including the chemical specific risk level used for derivation of the state PCB criteria.

b. Drinking Water Intake

Ecology properly derived human health criteria using a drinking water intake rate of 2.4 L/day. In the absence of reliable local or regional data, EPA recommends that states refer to the most current available national data on drinking water intake rates. EPA should approve Ecology's use of a drinking water intake value of 2.4 L/day to derive human health criteria, consistent with EPA's 2015 updated 304(a) recommendations.

c. Body Weight

Ecology properly derived human health criteria using a body weight assumption of 80 kg based on tribal survey data relevant to Washington and EPA's 2011 Exposure Factors Handbook.⁷ EPA should approve Ecology's selection of a body weight of 80 kg to derive human health criteria.

d. Bioconcentration Factors/Bioaccumulation Factors

Ecology properly derived human health criteria using Bioconcentration Factors ("BCFs"), including the use of EPA's 1980 guidance to calculate BCFs for 1,1,1-Trichloroethane and 3-Methyl-4-chlorophenol. Ecology concluded that, 1) BCFs are more closely related to water which is regulated under the CWA, 2) BCFs do not include as many inputs and predictions based on national datasets, 3) BCFs have fewer inputs and less uncertainty, and 4) BCFs are acceptable under the CWA for criteria development.⁸ Ecology demonstrated that its selection of BCFs to derive human health criteria is scientifically defensible and protective of the applicable designated uses.

To account for bioaccumulation, the EPA 2000 Human Health Methodology recommends use of bioaccumulation factors ("BAFs") that account for uptake of a contaminant

⁷ EPA. *EPA Exposure Factors Handbook*. 2011 ed. (EPA 600/R-090/052F).
<http://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=236252>.

⁸ See n.5, Ecology Overview, at 56.

from all sources by fish and shellfish, rather than BCFs that only account for uptake from the water column. EPA's 2015 304(a) recommendations replace BCFs with BAFs, where data are available. EPA's national recommended BAFs are not, however, based on publicly available data or translatable to Washington waters without extensive additional information. EPA published supplemental information on development of the national recommended BAFs in January 2016 that is still lacking in sufficient technical and scientific detail for its application to developing human health criteria in Washington.⁹

Ecology explained in its August 2016 submittal to EPA that it made an appropriate risk management decision to "use a BCF-based approach (as per EPA, 1980, and as used in the NTR) for criteria calculation for the following reasons:

- BCFs are more closely related to the specific environmental media (water) that is regulated under the Clean Water Act.
- BCFs do not include as many inputs and predictions that are based on national water, sediment, and biota datasets, while BAFs are dependent on these inputs. The national datasets supporting the BAFs are not necessarily reflective of Washington waters.
- The BCF-based approach includes far fewer input values. Because of this, the BCFs have far fewer sources of directly introduced uncertainty.
- BCFs are acceptable science for purposes of Clean Water Act criteria development. EPA currently uses a combination of BAFs and BCFs to calculate its NRWQC, and used a combination of BAFs and BCFs for its 2015 proposed new regulation for Washington. Therefore, both BAFs and BCFs could represent acceptable science choices for Clean Water Act purposes."¹⁰

EPA should approve the use of BCFs by Washington to derive the state human health water quality criteria as a scientifically defensible risk management decision for a state developing water quality standards under the CWA.

4. Relative Source Contribution

Ecology appropriately derived human health criteria using a relative source contribution ("RSC") value of 1.0. Ecology stated that this is an appropriate risk management decision due to the limited ability of the CWA to control exposure to pollutant sources outside of its jurisdiction.

EPA recommends an RSC ceiling of 0.8 to ensure protection of individuals whose exposure could be greater than indicated by current data and to account for unknown sources of exposure. In the EPA 2015 updated 304(a) recommendations EPA applied a pollutant-specific RSC value for all non-carcinogens and nonlinear carcinogens.²⁷ The EPA human health criteria FAQs clarify that, where a state FCR includes freshwater, estuarine, and all marine fish

⁹ USEPA. January 2016. *Development of National Bioaccumulation Factors: Supplemental Information for EPA's 2015 Human Health Criteria Update*. Office of Water, Washington, D.C. EPA 822-R-16-001.

¹⁰ Department of Ecology. *Washington State Water Quality Standards: Human health criteria and implementation tools, Overview of key decisions in rule amendment*. August 2016. Ecology Publication no. 16-10-025 at 56. <https://fortress.wa.gov/ecy/publications/documents/1610025.pdf>

consumption, states can adjust the RSC upward to reflect that marine exposures are already accounted for in the FCR.³⁰ In Washington, Ecology used an FCR of 175 g/day that includes all fish and shellfish, including all salmon, restaurant, locally caught, imported, and from other sources. Because the selected FCR includes all marine species, it is appropriate to use an RSC of 1.0 as the FCR already accounts for other potential exposure sources consistent with the logic and procedures used in establishing the national 304(a) criteria recommendations.

Ecology has adequately justified departing from the EPA guidance (to use an RSC between 0.2 and 0.8) when using an RSC value of 1.0 to derive human health criteria for all non-carcinogens and nonlinear carcinogens, and it has adequately explained why it is appropriate to disregard all other routes of exposure, including air, soil, other marine fish and shellfish, non-fish food, etc. Ecology demonstrated how its selection of an RSC value of 1.0 to derive human health criteria is scientifically defensible and protective of the applicable designated uses.

D. EPA Should Approve All of the Washington Human Health Water Quality Criteria

In accordance with 40 CFR 131.11(a), EPA must ensure that new or revised criteria are based on sound scientific rationale and contain sufficient parameters or constituents to protect designated uses. EPA should find that Ecology adopted human health criteria protective of designated uses in all cases and approve the Washington criteria as protective of Washington's designated uses, consistent with CWA requirements and EPA's implementing regulations at 40 CFR 131.11.

i. EPA Approval of 192 New Human Health Criteria

The EPA Action

Based upon the above evaluation and in accordance with its CWA authority, 33 U.S.C. § 1313(c)(3) and 40 CFR part 131, EPA should approve the 192 "water + organism" and "organism only" human health criteria identified in Table 1.

The EPA Rationale

EPA should evaluate Washington's criteria values against its 304(a) Guidance and the scientifically defensible methods cited in Ecology's key decision document. EPA should determine that the state human health water quality criteria are protective of Washington's designated uses.

Table 1. Approved Human Health Criteria

			Washington's Criteria	
			Water & Organisms (µg/L)	Organisms Only (µg/L)
1	1,1,1-Trichloroethane	71556	47000	160000
2	1,1,2,2-Tetrachloroethane	79345	0.12	0.46

			Washington's Criteria	
	Chemical	CAS Number	Water & Organisms (µg/L)	Organisms Only (µg/L)
3	1,1,2-Trichloroethane	79005	0.44	1.8
4	1,1-Dichloroethylene	75354	1200	4100
5	1,2,4-Trichlorobenzene	120821	0.12	0.14
6	1,2-Dichlorobenzene	95501	2000	2500
7	1,2-Dichloroethane	107062	9.3	120
8	1,2-Dichloropropane	78875	0.71	3.1
9	1,2-Diphenylhydrazine	122667	0.015	0.023
10	1,2-Trans-Dichloroethylene	156605	600	5800
11	1,3-Dichlorobenzene	541731	13	16
12	1,3-Dichloropropene	542756	0.24	2.0
13	1,4-Dichlorobenzene	106467	460	580
14	2,3,7,8-TCDD (Dioxin)	1746016	0.000000013	0.000000014
15	2,4,6-Trichlorophenol	88062	0.25	0.28
16	2,4-Dichlorophenol	120832	25	34
17	2,4-Dimethylphenol	105679	85	97
18	2,4-Dinitrophenol	51285	60	610
19	2,4-Dinitrotoluene	121142	0.039	0.18
20	2-Chloronaphthalene	91587	170	180
21	2-Chlorophenol	95578	15	17
22	2-Methyl-4,6-Dinitrophenol	534521	7.1	25
23	3,3'-Dichlorobenzidine	91941	0.0031	0.0033
24	3-Methyl-4-Chlorophenol	59507	36	36
25	4,4'-DDD	72548	0.000036	0.000036
26	4,4'-DDE	72559	0.000051	0.000051
27	4,4'-DDT	50293	0.000025	0.000025
28	Acenaphthene	83329	110	110
29	Acrolein	107028	1.0	1.1
30	Acrylonitrile	107131	0.019	0.028
31	Aldrin	309002	0.0000057	0.0000058
32	alpha-BHC	319846	0.0005	0.00056
33	alpha-Endosulfan	959988	9.7	10
34	Anthracene	120127	3100	4600
35	Antimony	7440360	12	180
36	Arsenic	7440382	10	10

			Washington's Criteria	
	Chemical	CAS Number	Water & Organisms (µg/L)	Organisms Only (µg/L)
37	Asbestos	1332214	7,000,000 (fibers/L)	
38	Benzene	71432	0.44	1.6
39	Benzidine	92875	0.00002	0.000023
40	Benzo(a) Anthracene	56553	0.014	0.021
41	Benzo(a) Pyrene	50328	0.0014	0.0021
42	Benzo(b) Fluoranthene	205992	0.014	0.021
43	Benzo(k) Fluoranthene	207089	0.014	0.21
44	beta-BHC	319857	0.0018	0.002
45	beta-Endosulfan	33213659	9.7	10
46	Bis(2-Chloroethyl) Ether	111444	0.02	0.06
47	*Bis(2-Chloro-1-Methylethyl) Ether	108601	Not submitted	Not submitted
48	Bis(2-Ethylhexyl) Phthalate	117817	0.23	0.25
49	Bromoform	75252	5.8	27
50	Butylbenzyl Phthalate	85687	0.56	0.58
51	Carbon Tetrachloride	56235	0.2	0.35
52	Chlordane	57749	0.000093	0.000093
53	Chlorobenzene	108907	380	890
54	Chlorodibromomethane	124481	0.65	3
55	Chloroform	67663	260	1200
56	Chrysene	218019	1.4	2.1
57	Copper	7440508	1300	
58	Cyanide	57125	19	270
59	Dibenzo(a,h) Anthracene	53703	0.0014	0.0021
60	Dichlorobromomethane	75274	0.77	3.6
61	Dieldrin	60571	0.0000061	0.0000061
62	Diethyl Phthalate	84662	4200	5000
63	Dimethyl Phthalate	131113	92000	130000
64	Di-n-Butyl Phthalate	84742	450	510
65	Endosulfan Sulfate	1031078	9.7	10
66	Endrin	72208	0.034	0.035
67	Endrin Aldehyde	7421934	0.034	0.035
68	Ethylbenzene	100414	200	270
69	Fluoranthene	206440	16	16

			Washington's Criteria	
	Chemical	CAS Number	Water & Organisms (µg/L)	Organisms Only (µg/L)
70	Fluorene	86737	420	610
71	Gamma-BHC; Lindane	58899	15	17
72	Heptachlor	76448	0.0000099	0.00001
73	Heptachlor Epoxide	1024573	0.0000074	0.0000074
74	Hexachlorobenzene	118741	0.000051	0.000052
75	Hexachlorobutadiene	87683	0.69	4.1
76	Hexachlorocyclopentadiene	77474	150	630
77	Hexachloroethane	67721	0.11	0.13
78	Indeno(1,2,3-cd) Pyrene	193395	0.014	0.021
79	Isophorone	78591	27	110
80	Methyl Bromide	74839	520	2400
81	Methylene Chloride	75092	16	250
82	Methylmercury	22967926	Not submitted	Not submitted
83	Nickel	7440020	150	190
84	Nitrobenzene	98953	55	320
85	N-Nitrosodimethylamine	62759	0.00065	0.34
86	N-Nitrosodi-n-Propylamine	621647	0.0044	0.058
87	N-Nitrosodiphenylamine	86306	062	0.69
88	Pentachlorophenol (PCP)	87865	0.046	0.1
89	Phenol	108952	18000	200000
90	Polychlorinated Biphenyls (PCBs)	PCB	0.00017	0.00017
91	Pyrene	129000	310	460
92	Selenium	7782492	120	480
93	Tetrachloroethylene	127184	4.9	7.1
94	Thallium	7440280	0.24	0.27
95	Toluene	108883	180	410
96	Toxaphene	8001352	0.000032	0.000032
97	Trichloroethylene	79016	0.38	0.86
98	Vinyl Chloride	75014	0.02	0.26
99	Zinc	7440666	2300	2900

ii. EPA Approval of Washington Human Health Criteria for PCBs

Ecology adopted human health criteria for PCBs that are the same as those that were in effect under the NTR (as revised in 1999): 0.00017 µg/L for both the criteria for water & organisms and organisms only. Ecology appropriately considered local and regional data when selecting an FCR of 175 g/day and risk level of 4×10^{-5} for deriving its PCB criteria. This risk level is the same level of risk/hazard used by the Washington Department of Health in developing fish advisories. When Ecology used the 4×10^{-5} cancer risk level along with its other inputs to calculate PCB criteria, the resulting criteria of 0.00029 µg/L were less stringent than the 1999 NTR values. Ecology then made an appropriate risk management decision to adjust the cancer risk level to 2.3×10^{-5} so the criteria adopted by the state would be equivalent to the NTR criteria for PCBs, 0.00017 µg/L.¹¹

The EPA Action

Based upon the above evaluation and in accordance with its CWA authority, 33 U.S.C. § 1313(c)(3) and 40 CFR Part 131, EPA should approve Washington's "water + organism" and "organism only" human health criteria for PCBs of 0.00017 µg/L.

The EPA Rationale

EPA should determine that Washington's criteria of 0.00017 µg/L for the protection of human health from exposure to PCBs from the consumption of water and organisms and organisms only are protective of Washington's designated uses and, therefore, comply with CWA § 303(c) and 40 CFR 131.11. Ecology provided adequate supporting information for its chemical specific state risk management decision, which conforms to EPA historic and recent 304(a) Guidance.

Ecology's submittal of human health criteria to EPA includes information regarding both the difficulty in detecting and the ability to treat effluent to remove PCBs. The analytical method required by EPA for compliance purposes (EPA Method 608) does not detect PCBs at the low concentrations in water at which they occur. Because PCBs in the water column are difficult to detect, methods that depend on concentration of PCBs in fish and shellfish tissue are frequently used to assess PCB levels across the state. Aquatic biota accumulate PCBs as part of their exposure to the food web, and the PCBs are often detected in fish and shellfish tissue. The use of fish and shellfish tissue monitoring data are used to support development of Washington Department of Health fish advisories (WDOH, 2014) and Clean Water Act Section 303(d) impaired waters lists (Ecology, 2012). Monitoring information demonstrates that PCBs are widespread in the environment, but have in general been decreasing in concentrations since the 1979 "ban" on use of PCBs was put in place.

PCBs present regulatory challenges for Clean Water Act programs because:

- PCBs were widely used prior to the 1979 "ban".
- PCBs are widespread in the sediments and in biota.

¹¹ See n.5, Ecology Overview, at 67.

- PCBs are long-lasting and bind readily to fats. Because of this they continue to cycle in the environment and in the food web. PCBs readily accumulate in organisms.
- PCBs are transported through the atmosphere.
- Because PCBs are transported along many pathways, and come from many sources associated with human habitation and use, they are found widely in environments that range from pristine to highly developed.
- Treatment plants are most often not designed to remove these chemicals. However, treatment plants that enhance solids removal will also remove PCBs.

These PCB characteristics make them particularly difficult to control, and efforts to address PCBs are multimedia, including contaminated site clean-up, regulation of PCBs in products, and reductions of PCBs from airborne sources. Disposal of PCBs requires specifically designed equipment. Ecology has developed a Chemical Action Plan for PCBs to address additional multimedia approaches to control PCBs entering the environment.¹²

EPA additionally has acknowledged unresolved technical issues associated with deriving human health water quality criteria for PCBs.

On June 29, 2015, EPA issued a final update to its CWA 304(a) Guidance for the protection of public health. PCBs were among the chemicals that EPA did not update due to “outstanding technical issues.”¹³ The scope of these technical issues is described in statements by EPA justifying its decision not to revise the Toxics Substance Control Act (“TSCA”) PCB regulations. Dennis McLerran, in a letter addressed to the Spokane River Regional Toxics Task Force through the Department of Ecology, wrote:

Revising current regulations to reduce inadvertently generated PCBs presents both policy and scientific challenges. Before proposing more stringent regulations on the inadvertent generation of PCBs in pigments, the EPA would seek to further understand the complexities and contributions of not only pigments, but also other congeners that may be present [in receiving water]....

...The aggregation of PCB congeners may in some instances be problematic for risk assessment because the toxicity of different PCB congeners varies and a fixed water quality concentration for total PCBs may not adequately represent the variable toxicity of the various congeners actually present in a particular water body. While the EPA is not proposing to undertake a comprehensive analysis of the remaining PCB congeners, we are examining the characterization of PCBs in water bodies. As stated above, characterizing all of the PCBs in the EPA recommended water quality criteria for PCBs (i.e., expressed as total PCBs) is one topic we are discussing.¹⁴

¹² See n.5, Ecology Overview, at 63.

¹³ See n.129. EPA, Human Health Ambient Water Quality Criteria: Draft 2014 Update at 2.

¹⁴ D. McLerran, Letter to A. Borgias (February 24, 2015)(04239-04240).

EPA affirmed as recently as August 3, 2015, that revising PCB regulations “presents both policy and scientific challenges.”¹⁵ This is particularly the case because EPA authorizes ongoing PCB generation and release to the environment under its TSCA rules and through tribal and federal hatchery operations in the State of Washington.

These challenges support the state PCB criteria. A recent study in Washington documented the ubiquitous presence of low PCB levels in manufactured products including paints, used motor oil, road striping, dust suppressants, antifreeze, hydro-seed materials, packaging, toothpaste, hand soap, laundry soap and shampoo.¹⁶

For many dischargers in Washington, EPA-allowed PCB concentrations are a significant portion of the PCBs in their effluent. For pulp and paper mills using recycled materials their primary source of PCBs is from EPA-allowed concentrations in inks and dyes.¹⁷ The same is true for wastewater treatment plants. In a 2015 report, Spokane County reported that PCB-11, a PCB congener associated with EPA allowed PCB concentrations, “was measured at relatively high concentrations...in both the influent and effluent.”¹⁸ PCB-11 was the “single most abundant congener in the effluent.”¹⁹ The same study evaluated PCB concentrations from three neighborhoods predominantly developed before 1970, from 1970 to 1985 and after 1985. The study found the highest PCB concentrations from the two most recently developed neighborhoods and concluded that there is “little correlation between the year of construction and the source of PCB contamination.”²⁰

Ecology made an appropriate risk management decision specific to PCBs given the ubiquitous presence of PCBs in Washington surface waters in effluent and stormwater, including discharges and fish released from federal and tribal fish hatcheries. Implementing the PCB criteria adopted in the EPA Final Rule would create a regulatory quagmire for the state NPDES and TMDL program.

Most of the state of Washington would likely be listed as impaired for failing to meet the EPA PCB criteria. This is illustrated in the following chart, based on water column data in the Ecology Environmental Information (“EIM”) database.²¹ This table shows an average of the total PCBs for each monitoring station at the surface and at depth throughout Puget Sound:

¹⁵ L. Mann, Email to M. Macintyre at 2 (August 3, 2015)(05063-5065).

¹⁶ City of Spokane, PCBs in Municipal Products (Rev.), Table B-1 (July 21, 2015)(06694-6738).

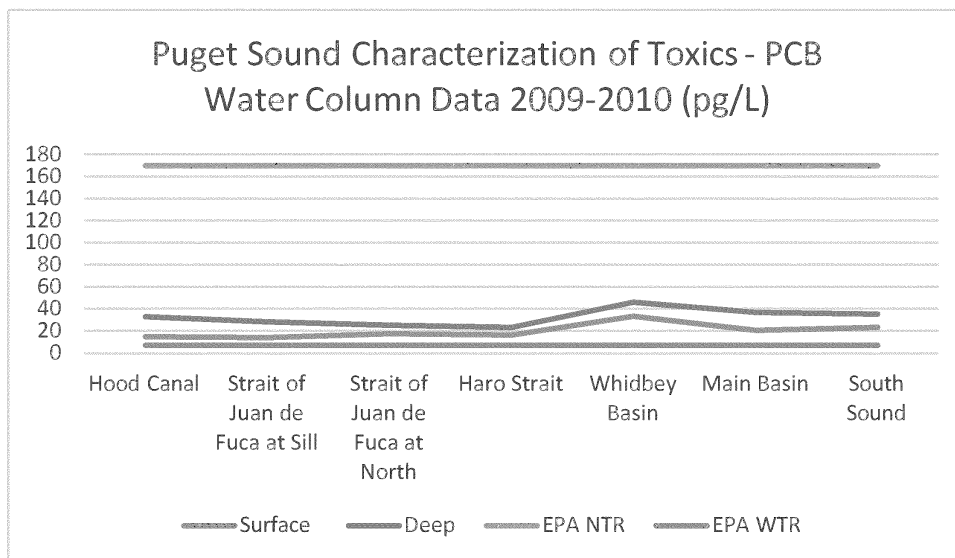
¹⁷ D. Krapas, Slide Show “Dealing with PCBs in the Spokane River” at 3 (October 2, 2012)(06443-6463).

¹⁸ Brown and Caldwell, 2015 Annual Toxics Management Report Spokane County Regional Water Reclamation Facility NPDES Permit WA-0093317 at 2-18 (2015)(04861-4948).

¹⁹ *Id.* at 2-18.

²⁰ *Id.* at 2-27.

²¹ Ecology email (07311) and attached EIM Data for Puget Sound (Dec. 8, 2015)(05987)



Based on this data, all of Puget Sound, Hood Canal and Strait of Juan de Fuca would be subject to listing under the CWA as impaired for failing to meet the EPA Final Rule PCB criteria. Ecology has further documented that wastewater treatment plants in Washington have levels of PCB concentrations that are well above the EPA Final Rule PCB criteria. In fact, every wastewater treatment plant sampled by Ecology, with the exception of two facilities with reporting levels of 600 pg/L, were well above the final EPA criteria.²²

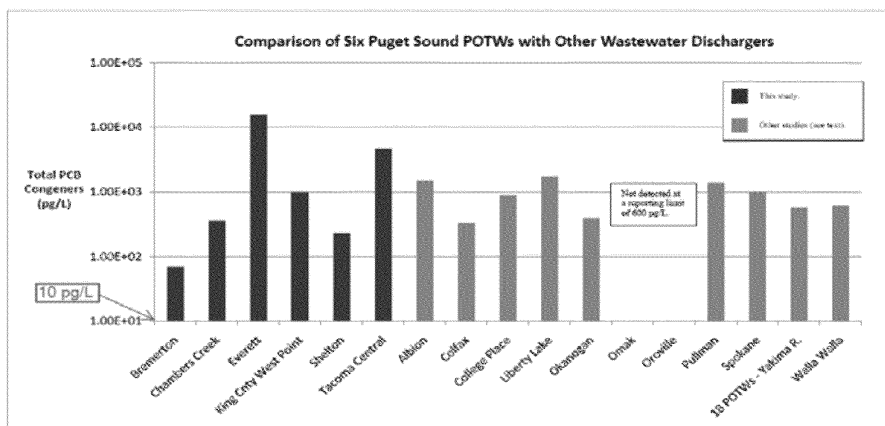


Figure 2. Comparison of Average Total PCB Results among Several POTWs

EPA has previously relied on this effluent data information to perform a narrative reasonable potential analysis for three municipalities on the Spokane River. In the 2012 Fact

²² Ecology, Control of Toxic Chemicals in Puget Sound Summary Technical Report for Phase 3: Loadings from POTW Discharge of Treated Wastewater, Figure 2 (December 2010)(Publication No. 10-10-057)(05746-5986).

Sheet for the City of Coeur d'Alene wastewater treatment plant NPDES permit EPA made the following statement regarding the data presented in Figure 2:

PCBs have been detected in effluent from POTWs discharging to the Spokane River in the State of Washington (i.e., the City of Spokane and Liberty Lake Sewer and Water District) as well as other POTWs in Washington State operated by the Cities of Medical Lake, Okanogan, College Place, Walla Walla, Pullman, Colfax, Albion, Bremerton, Tacoma, and Everett, and King and Pierce counties. Effluent concentrations of total PCBs at these 14 facilities (a total of 34 samples) ranged from 46.6 to 39,785 pg/L with a median concentration of 810 pg/L.²³

The Spokane River offers a precedent for how PCBs will be regulated in NPDES permits throughout the state of Washington under the EPA Final Rule PCB criteria. EPA approved water quality standards for the Spokane Tribe of Indians in 2013 that include a PCB criteria of 1.3 pg/L. In litigation regarding the obligation of EPA to develop a PCB TMDL for the Spokane River EPA has represented in federal court that year-round tertiary membrane filtration treatment is an appropriate best management practice for a wastewater treatment plant.²⁴

The incremental cost for such treatment including construction costs and operation and maintenance costs range between \$75 and \$160 million for a 5 mgd plant and net present value unit cost of between \$15 and \$32 per gallon per day. Attachment C, at ES-3, Table ES-1. EPA previously identified 406 NPDES permits administered by Ecology including 73 “major” permits in its economic impact analysis for the EPA Final Rule. If EPA were to follow the same approach on Puget Sound that it has on the Spokane River, this would amount to a range of compliance costs from nearly \$6 billion to over \$11 billion for just “major” permits identified by EPA.²⁵

It is also apparent that tribal and federal fish hatcheries discharge a significant percentage of the annual PCB loading to Washington waters. EPA authorizes the operation of these hatcheries and the contamination of fish released by these hatcheries under the authority of a general NPDES permit.²⁶ Ecology has identified hatcheries as a significant source of PCB loading to waters of the state, and has estimated that as much as ten percent of annual PCB loading to Puget Sound is attributable to returning salmon.²⁷ In 2011, Ecology calculated that returning salmon contribute up to 0.3 kg/yr based on PCB residues per whole-body fish ranging from 7 µg for pink salmon to 336 µg for Chinook salmon.²⁸

²³ EPA, City of Coeur d'Alene Revised Fact Sheet NPDES Permit No. ID0022853 at 17 (2013)(07468-7569).

²⁴ *Sierra Club v. EPA*, Case No.2:11-cv-017959-BJR Doc. No. 129-1 EPA's Plan for Addressing PCBs in the Spokane River (July 14, 2015)(06320-6350).

²⁵ \$75 MM x 73 = \$5.5 Billion; \$160 MM x 73 = \$11.7 Billion.

²⁶ EPA, Preliminary Draft NPDES Permit for Federal Aquaculture Facilities and Aquaculture Facilities Located in Indian Country, Permit No. WAG-130000 (August 2015)(06216-6319).

²⁷ Ecology, Control of Toxic Chemicals in Puget Sound: Assessment of Selected Toxic Chemicals in Puget Sound 2007-2011 at 93 (2011)(Ecology Pub. 11-03055)(04297-4593).

²⁸ *Id.*

Ecology has also acknowledged, in addition to the PCB loading from returning salmon, that PCB contaminated hatchery fish play a significant role in CWA Section 303(d) listings for PCBs.²⁹ Ecology concluded that hatchery fish “may contribute to impairment and, in some cases, may cause the bulk of impairment.”³⁰ *Id.*, at 30.

The 2006 Ecology report on hatchery fish included an analysis of skin-on fillets of pre-release rainbow trout from 11 hatcheries with PCBs concentrations ranging from <2.3 to 67 ng/g (wet weight) with an average of 13.0 ng/g (wet weight) PCBs.³¹ Other researchers have found between 39 and 59 ng/g total PCBs in whole-body juvenile Chinook salmon from six west coast hatcheries.³² The authors concluded, “contaminated salmon may be a significant source of toxicants in the environment and in the food chain.”³³ A study of British Columbia hatcheries found on average 25.5 and 48.5 ng/g (wet weight) PCBs in Chinook smolts from two hatcheries and 34.9 ng/g (wet weight) in Coho smolts from a third (BC) hatchery.³⁴ An analysis of pre-release juvenile Chinook from eight hatcheries feeding on the Columbia River found whole body concentrations of PCBs ranging from 6.9 to 61 ng/g (wet weight), corresponding to 22 to 323 ng per fish (individual hatchery-specific average weights from 3.2 to 6.2 g).³⁵ An analysis of pre-release juvenile Chinook salmon from the Soos Creek hatchery on Puget Sound over a three year period found total PCB concentrations ranging from 10 to 50 ng/g (wet weight), corresponding to 90 to 125 ng PCB per fish (fish weight ranged from 2.5-9.4 g).³⁶ NOAA Fisheries has also documented the significant PCB concentrations in hatchery fish feed and in hatchery origin fish.³⁷

Tribal and federal hatcheries are undoubtedly an increasing source of PCB loading to Washington waters. In 2010, the combined hatchery release in Washington was 229.5 million

²⁹ Ecology, Persistent Organic Pollutants in Feed and Rainbow Trout from Selected Trout Hatcheries (April, 2006)(Ecology Pub. No. 06-03-017)(04681-4732).

³⁰ *Id.* at 30.

³¹ *See* n.29.

³² L. Johnson *et al*, Contaminant Exposure in Outmigrant Juvenile Salmon from Pacific Northwest Estuaries of the United States, 124 ENVIRON. MONIT. ASSESS. 167-194 (2007)(04955-4982).

³³ *Id.*

³⁴ Kelly *et al*, Persistent Organic Pollutants in Aquafeed and Pacific Salmon Smolts from Hatcheries in British Columbia, Canada, 285 AQUACULTURE 224-233 (2008).

³⁵ Johnson *et al*, Contaminant Concentrations in Juvenile Fall Chinook Salmon from Columbia River Hatcheries, 72 N. AMERIC. J. AQUACULTURE 73-92 (2010).

³⁶ Meador *et al.*, Bioaccumulation of Polychlorinated Biphenyls in Juvenile Chinook Salmon (*Oncorhynchus Tshawytscha*) Outmigrating through a Contaminated Urban Estuary: Dynamics and Application, 19 ECOTOXICOLOGY 141-152 (2010).

³⁷ NOAA Fisheries, Draft Environmental Impact Statement on Two Joint Tribal Resource Management Plans for Puget Sound Salmon and Steelhead Hatchery Programs, Appendix K (2014)(04257-4273).

fish including 117.4 million Chinook salmon.³⁸ In 2015, the Northwest Indian Fisheries Commission reported that tribal hatcheries alone released 40 million salmon and steelhead.³⁹

The Washington PCB criteria reflect a reasonable state risk management decision that is consistent with EPA 304(a) Guidance. It represents a level of protection that is well within the acceptable range of risk provided for in that guidance, reflects the use of a defensible scientific method by relying on the basis for fish advisories by the state Department of Health, and is a reasoned approach given the technical and scientific issues in developing PCB criteria as well as the potential dislocation of the state water quality program under very stringent PCB criteria.

iii. EPA Approval of Washington Human Health Water Quality Criteria for Arsenic

Ecology adopted human health criteria of 10 µg/L for arsenic for water & organisms and organisms. These criteria are equivalent to the Safe Drinking Water Act (“SDWA”) maximum contaminant level (“MCL”) that applies in Washington for drinking water protection. Ecology based this decision on scientific information, regulatory precedent by other states and EPA, and high concentrations of naturally occurring arsenic in Washington.⁴⁰ Washington’s aquatic life water quality standards for arsenic are contained in the state’s water quality standards rule for aquatic life criteria (WAC 173-201A-240). Arsenic human health criteria are also contained in the EPA-promulgated NTR. 40 C.F.R. § 131.36.

Arsenic is a naturally occurring element present in the environment in both inorganic and organic forms. Arsenic is present in rocks, soils, and the waters in contact with them, and concentrations in ground waters in the United States generally are highest in the West, with elevated levels also commonly occurring in the Midwest and Northeast. (USGS, 2000). Inorganic forms of arsenic are considered to be the most toxic, and are found in groundwater and surface water, as well as in many foods. A wide variety of adverse health effects, including skin and internal cancers, and cardiovascular and neurological effects, have been attributed to chronic arsenic exposure, primarily from drinking water (NAS, 1999; CTD, 2013).

A large area of uncertainty in the regulation of arsenic is the form of arsenic present in marine fish. EPA reported in 1997 that the form of such arsenic is typically organic and thus not relevant to establishing human health criteria.⁴¹ The report recommends that EPA use the Safe Drinking Water Act (SDWA) Maximum Contaminant Levels (MCLs) for arsenic.⁴² In the west,

³⁸The Role of Hatcheries in North American Wild Salmon Production, The Great Salmon Run: Competition Between Wild and Farmed Salmon, Table IV-1 at 44 (06739-6752).

³⁹ Northwest Indian Fisheries Commission, Tribal Natural Resources Management, A Report from the Treaty Tribes in Western Washington at 4 (2015)(06530-6545).

⁴⁰ Department of Ecology. *Washington State Water Quality Standards: Human health criteria and implementation tools, Overview of key decisions in rule amendment*. August 2016. Ecology Publication no. 16-10-025 at 70. <https://fortress.wa.gov/ecy/publications/documents/1610025.pdf>

⁴¹ EPA, Arsenic and Fish Consumption, 2-5 9Dec. 3,1997)(05043-5062).

⁴² *Id.*, at 1.

where naturally high levels of arsenic in groundwater and geology are prevalent, six states have also adopted the SDWA arsenic MCL as their human health water quality criteria.

Up until 2001, the drinking water MCL for arsenic was 50 µg/L. EPA lowered the arsenic MCL to 10 µg/L in 2001 (EPA, 2001), following an extensive public process. The new standard went into effect for public supplies of drinking water nationwide in 2006. SDWA standards for arsenic in Washington are under the authority of the Washington Department of Health.

EPA is currently in the process of reviewing the toxicity information in the Integrated Risk Information System (“IRIS”) related to inorganic arsenic, and plans to submit its next draft to the National Research Council for future peer review (EPA, 2014). Nationwide, nearly half of the states use the SDWA MCL value of 10 µg/L for their arsenic HHC (ODEQ, 2011, P. 19). Use of SDWA regulatory levels as HHC is not unusual for both EPA and states. EPA developed CWA §304(a) national recommended HHC (for freshwater) for asbestos in 1991 and copper in 1998 based on SDWA regulatory levels (EPA 2002). The SDWA-based asbestos criterion (7,000,000 fibers/L) is currently in the NTR, was issued to several states in 1992, and was retained in the 1999 NTR revision; and the copper criterion (1,300 mg/L) was issued by EPA to California in 2000 (40 CFR 131.38 - Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California).

Ecology reasonably determined that it could not calculate arsenic criteria based on cancer without a reliable toxicity factor. EPA agrees that new cancer-based criteria for arsenic cannot be calculated at this time. In a May 6, 2016 filing with the United States District Court for the Western District of Washington, EPA stated that it will withdraw its proposed arsenic criteria for Washington because “extensive additional scientific analysis is necessary before revised criteria” for arsenic can be promulgated. *Puget Soundkeeper Alliance et. al. v. U.S.E.P.A.*, Case No. 2:16-cv-00293-JLR, EPA’s Motion for Summary Judgment (May 6, 2016) at 13. As EPA explained in the Declaration of Elizabeth Southerland, Director of the Office of Science and Technology with EPA’s Office of Water, “EPA did not update its CWA section 304(a) recommended criteria” for arsenic in 2015, and “EPA recognizes that there is substantial uncertainty surrounding the toxicological assessment of arsenic with respect to human health effects.” Declaration of Elizabeth Southerland (May 5, 2016) at 7.

Ecology reasonably determined that use of the EPA cancer potency factor would introduce a significant amount of uncertainty if used to develop HHC for arsenic:

- The inorganic arsenic cancer potency factor has been under reassessment for many years, and a date for finalization is not finalized (EPA, 2014). Newer information from EPA indicates that the CSF for arsenic could be finalized in EPA’s IRIS in 2017.
- EPA did not use the 1998 IRIS cancer potency factor in its development of the new Safe Drinking Water Act (SDWA) MCL of 10 ppb promulgated in 2001, nor did they depend on this value in their promulgation of the HHC for the state of California in 2000. In the 2000 California Toxics Rule, EPA expressed their finding of uncertainty around the effects of arsenic, and did not use the newer 1998 cancer potency factor (EPA 2000). EPA used the older cancer potency factor ((1.75 per (mg/kg)/day) derived from the drinking water unit risk (5E-5 per (µg/L)) that was used to calculate

the NTR arsenic criteria in its 1998 and 2002 national recommended guidance criteria calculations, but not as the basis of new regulations in either the 2000 California Toxics Rule or the new 2001 Safe Drinking Water Act MCL for arsenic.

On June 29, 2015, EPA published an update to the CWA 304(a) human health criteria.⁴³ The updated criteria did not include new criteria for arsenic. EPA stated in the announcement of the proposed updates in 2014 that the agency did not have the ability to update the arsenic criteria due to “outstanding technical issues.”⁴⁴

Nationally, about half of the states have obtained EPA approval for arsenic human health criteria based on the SDWA MCL.⁴⁵ EPA should accordingly agree that the Ecology adopted arsenic criteria are protective of public health, consistent with EPA guidance and based on scientifically defensible methods.

III. EPA SHOULD UNDERTAKE RULEMAKING TO WITHDRAW THE FEDERAL HUMAN HEALTH WATER QUALITY CRITERIA FOR WASHINGTON

Undoing EPA’s arbitrary and capricious disapproval of the Washington-submitted human health criteria and simultaneous promulgation of substitute criteria is a two-step process. First, as set forth above, EPA should reconsider the August 2016 Washington-submitted standards and approve those standards pursuant to CWA § 303(c)(3), (c)(4). Second, EPA should repeal or withdraw the substitute criteria in the EPA Final Rule.

A. EPA Unlawfully Pre-Determined the Washington Water Quality Standards During the State and Federal Rulemaking Process

The EPA Final Rule expresses what had been a political demand by EPA for human health water quality criteria in the state of Washington since at least 2013. The EPA demands were not based on the CWA, EPA guidance, sound science or applicable law. It was apparent, from the inception of rulemaking in early 2013 by Ecology through publication of EPA’s final rule during the last weeks of the previous administration, that EPA had taken a hardened position on two key factors—fish consumption rates and acceptable risk levels. Throughout this process, EPA refused to engage in any discussion on the merits or basis for its demands. The background information provided in the proposed and final rule Federal Register notices continued these obfuscations and in several cases, misrepresented the cited references and basis for the rule. Bereft of any basis under the CWA, its regulations and guidance, EPA pursued a post-hoc rationalization using a new, invented and ever-changing interpretation of Indian tribal treaty rights.

In a recent meeting of the Spokane River Regional Toxics Task Force on January 25, 2017, attended by EPA officials Christine Psyk, Angela Chung, Matthew Szelag, Lucy Edmundson and Brian Nickel, Angela Chung admitted that the final rule was based on EPA’s

⁴³ See n.128. EPA, Final Updated Ambient Water Quality Criteria at 36987.

⁴⁴ See n.129. EPA, Human Health Ambient Water Quality Criteria: Draft 2014 Update.

⁴⁵ See n.5. Ecology Overview, at 44 (00050).

interpretation of treaty fishing rights. The EPA-interpreted “rights” are not rights contained in any underlying treaty. The EPA Final Rule is not even based on the treaty rights as described in the proposed rule, but rather on an entirely new interpretation of treaty rights set forth, for the first time, in the final rule. As EPA admitted in its response to comments on the proposed rule, EPA’s position on the treaty law has “evolved.”⁴⁶ The evolution here was in fact a quest to find some justification for a political decision that had been made by EPA years ago.

The EPA disapproval of the Washington human health water quality criteria represents a fundamental departure from the basis and authority for EPA review of state water quality standards. Comments by the National Association of Clean Water Agencies regarding EPA’s response to Washington’s proposed human health criteria rule provide a cogent summary of how EPA usurped the role of the State of Washington in developing water quality standards:

[T]he language in the CWA and the implementing regulations was not intended to give EPA authority to disapprove standards because the state’s science and policy decisions are not identical to [EPA’s] preference, policies and guidance. . . In the case of Washington’s proposed rule, which in fact was consistent with the range of values and approaches included in existing federal guidance, EPA appears to ignore the flexibility afforded to states in its own guidance by insisting that the state’s program conform to EPA’s preferred approach. These tactics are inconsistent with the CWA’s cooperative federalism foundation and history that provides the states the responsibility for developing and approving water quality standards. . . . The structure established by the CWA—where EPA provides criteria recommendations and guidance and the states develop water quality standards based on that information as well as state policy and risk decisions (where a range of acceptable CWA options exist)—must be preserved to ensure that federal preference and the criteria recommendations do not become de facto regulations.⁴⁷

EPA drew a line in the sand on these issues with the regulated community in Washington at a meeting on April 9, 2013. That meeting took place in the offices of EPA Region 10 in Seattle, Washington and was attended by then EPA Regional Administrator Dennis McLerran and Daniel Opalski, as the Director of the Region 10 Office of Water and Watersheds, representatives of Northwest Pulp & Paper Association, the Association of Washington Business, the Association of Washington Cities, the City of Everett, Weyerhaeuser and Inland Empire Paper Company. Mr. McLerran opened the meeting by stating that the criteria in Washington should be based on a 175 grams per day (g/day) fish consumption rate and risk policy of one in one million (1×10^{-6} or 10^{-6}). Mr. McLerran explained, exhibiting ignorance of the basis for water quality standards, that this was so because “everyone should be protected to the same level.”⁴⁸ It is in fact impossible to protect every consumer to the same risk level as there will always be, in the case of fish consumption, a range of consumption rates and therefore

⁴⁶ A. Chung, pers communication to Spokane River Regional Toxics Task Force (Jan. 25, 2017).

⁴⁷ K. Kirk, Letter to D. McLerran re EPA Efforts to Influence Washington Rulemaking at 2-3 (May 13, 2015)(04743-4745).

⁴⁸ D. McLerran, Pers. Communication to NWPPA Members (April 9, 2013).

a range of risks. Mr. McLerran further stated, with no basis under the CWA, that there had to be regional, meaning EPA regional, consistency on the toxic criteria. Mr. McLerran further stated that he was otherwise unwilling to discuss these factors with the regulated community.

EPA was equally opaque in its dealings with the state of Washington. Ecology presented the risk level policy issue to EPA Region 10 on numerous occasions over the past five years. The origins and basis for the one in one million risk policy were the subjects of several emails to EPA regional staff in January and February 2013.⁴⁹ EPA staff attended the February 8, 2013, and March 28, 2013 Ecology Policy Forum meetings where the current risk policy in Washington and EPA guidance on risk policy were discussed.⁵⁰ EPA staff never indicated in response to these emails or at the meetings that there has been any change in EPA policy—or any circumstances that require human health criteria in Washington to vary from national guidance.

Ecology specifically raised the risk policy issue to EPA national and regional staff at a meeting on March 20, 2013. The regional staff included Lisa Macchio, Mary Lou Soscia, Matthew Szelag, Lon Kissinger and Angela Chung.⁵¹ The following questions and answers were recorded regarding EPA guidance on risk policy:

Question: Does EPA agree that [the Washington] risk level applies to [the] general population?

Angela Chung: EPA can't answer that now.

Question: Would EPA disapprove a standard based on 10^{-6} for general population as long as 10^{-4} is max for highly exposed?

Angela Chung: EPA can't answer that now.⁵²

Ecology raised this issue with EPA staff again in emails and meetings in October and November 2013.⁵³ At these meetings between agency staff, the risk policy was listed as a topic for discussion. Ecology also presented its range of policy options at a public meeting on November 6, 2013.⁵⁴ EPA staff were present for the meeting but made no comment on national 304(a) Guidance for setting risk policy and there is no record of any comments from EPA regarding the policy options presented at this meeting. In meeting after meeting EPA staff remained silent on this issue. This included two public meetings held in 2013 and 2014, at seven delegate table meetings in 2012, 2013 and 2014, and at five Policy Forum meetings in 2013.

⁴⁹ C. Niemi, Email to L. Kissinger (January 2, 2013)(03933-3934).

⁵⁰ See Attendance Lists for Meetings on June 24, 2013, November 6, 2013, and July 2014 (03935-3943).

⁵¹ C. Niemi, Handwritten Notes (March 20, 2013)(“Dennis [EPA Region 10 Administrator] thinks the OR outcome was the right outcome, regionally wants to explore that position.”)(00455-0458).

⁵² *Id.*

⁵³ M. Gildersleeve, Email to A. Chung and M. Szelag (Oct. 1, 2013)(03944).

⁵⁴ Ecology, Preliminary Draft – HHC Tools Summary, Water Quality Standards Rule Making, Human Health Criteria, Summary, (Nov. 6, 2013)(03945).

The issue was most pointedly raised in a meeting with EPA regional staff on March 11, 2014. After months of silence, Mr. McLerran apparently stated, with yet again profound ignorance of the EPA principles for environmental justice, that “175 grams a day at 10^{-6} is a baseline for environmental justice.”⁵⁵ Mr. McLerran falsely represented that this assertion was based on EPA guidance. In a follow-up email, Ecology requested that Region 10 verify the existence of that guidance. Ecology specifically asked:

I have a copy of the document: “EPA Policy on Environmental Justice for Tribes and Indigenous Peoples.” It is a pre-decisional working draft dated November 14, 2012.

Is that the document Dennis referred to?

...

As we discussed, tribal members, and anyone eating high amounts of fish, are at higher risk. They are at a risk exactly proportionate to the consumption rate and will be at the same ratio (proportion) regardless of where the rule lands. Interpreting this section of the policy to mean that they can’t be at a higher risk would frustrate the entire system the HHC equations are based on and make it impossible to comply. **Is there a statement somewhere that one in a million risk rate is the baseline to establish environment justice?**⁵⁶

Mr. Opalski responded to this email and confirmed that there is no such statement. In an email dated March 11, 2014, he conceded: “Regarding the environmental justice concern, you are right that there isn’t anything that will/does call out particular risk levels.”⁵⁷

EPA Region 10 provided an additional comment on the Washington proposal in a letter dated July 1, 2014. This letter was in response to two letters from Washington State Senator Doug Ericksen. Sen. Ericksen, in his first letter on April 3, 2014, asked EPA Regional Administrator Dennis McLerran, “I specifically would like to know what your agency considers to be an appropriate cancer risk level for the state of Washington.”⁵⁸ Three weeks later Mr. McLerran responded with a letter that was not responsive to this question.⁵⁹ Sen. Ericksen sent a second letter to Mr. McLerran on May 28, 2014, pointing out that “I asked a specific question relating to a very important issue that will affect Washington’s economy and public health, but you did not provide me with a specific answer.”⁶⁰ Sen. Ericksen requested an answer to his question and rephrased it as follows:

⁵⁵ K. Susewind, Email to D. Opalski (March 11, 2014)(00459-0461).

⁵⁶ *Id.* (emphasis added).

⁵⁷ D. Opalski, Email to K. Susewind (March 11, 2014)(03946).

⁵⁸ D. Ericksen, Letter to D. McLerran (April 3, 2014)(03947-3948).

⁵⁹ D. McLerran, Letter to D. Ericksen (April 24, 2014)(03949).

⁶⁰ D. Ericksen, Letter to D. McLerran (May 28, 2014)(03950-3951).

- (1) Have you or your staff indicated to the Washington Department of Ecology that there is a threshold cancer risk level that must be proposed for the state's criteria to receive approval?
- (2) Have you or your staff indicated to Ecology that a cancer risk level of 10^{-6} is required or that it is a level you want the state to propose?
- (3) Have you or your staff provided any specific directives to Ecology outlining what you will accept for a cancer risk level for Washington?⁶¹

Mr. McLerran, in a letter dated July 1, 2014, responded that certain “groups could be provided less protection than they have now” if Washington uses a one in one hundred thousand risk policy.⁶² Mr. McLerran and EPA refused to answer the basic question of whether there is a threshold cancer risk level for deriving human health criteria.

By the summer of 2014 it was clear that EPA was struggling to find some post-hoc rationalization for its demands. In some instances EPA would abandon any pretense of what is required under the CWA and simply assert its policy preferences are appropriate because “Dennis is concerned” or “Dennis feels.”⁶³ At other times EPA would assert grounds for its demands that later disappeared. In March and July 2014, EPA claimed that its preferred fish consumption rate and risk level was required as a matter of environmental justice. This argument is notably absent from both the EPA comment letter on the Ecology proposed rule and the Federal Register explanations for the basis of the EPA proposed and final rule.⁶⁴

On March 23, 2015, EPA submitted a formal comment letter on the Ecology proposed rule. The letter was signed by Mr. Opalski, who participated in many of the meetings and telephone conversations and emails discussed above. In that letter, EPA asserted an entirely new basis for EPA's demands, stating that a one in one million risk level applied to tribal consumption rates is a “compromise position” of Washington tribes.⁶⁵ This is a statement that is not supported by any of the tribal letters that EPA has included in the rulemaking docket or the comments from tribes and tribal organizations on the Ecology draft rule. NWPPA submitted a Freedom of Information Act request to EPA for any documents that reflect the claim in the EPA comment letter. Matthew Szelag and Andre Szalay, an attorney in the Region 10 Office of Regional Counsel, initially responded in a telephone conference that there were no public records to support the statement by EPA. EPA nonetheless produced twenty-six pages of heavily redacted emails and publicly available documents, not one of which includes a communication from or on behalf of any tribe stating that a one in one million risk level is a “compromise

⁶¹ *Id.*

⁶² D. McLerran Letter to D. Ericksen (July 1, 2014)(03952-3953).

⁶³ C. Niemi, Handwritten Notes (00455-8) and A. Chung, Pers. Communication, NWPPA Annual Meeting (June 6, 2013).

⁶⁴ D. Opalski, Letter to C. Niemi EPA Comment on Ecology Draft Rule (March 23, 2015)(07230-7249).

⁶⁵ *Id.*

position of the tribes.”⁶⁶ At most some tribal representatives have demanded a 10^{-6} risk level but there is no evidence that any tribal representative has offered any scientific research or data to support what is a significant change in the risk policy applied in Washington.

The March 23, 2015, comment letter is also noteworthy as being the first time EPA asserted that tribal treaty rights require the application of a specific risk level to tribal consumption rates. EPA had never cited this rationale in prior meetings with the regulated community or in communications or meetings EPA had with Ecology staff. Having asserted this claim, however, EPA has consistently refused to explain how a treaty right to take fish dictates any specific risk management decision. This question was specifically posed to EPA by Ecology on July 15, 2015:

Does EPA have an OGC [Office of General Counsel] or other legal opinion or rationale on how risk level and treaty tribal rights are connected, and why 10^{-6} is looked upon by EPA as fulfilling the rights, and 10^{-5} is not? Could you send me a copy of the opinion/rationale document?⁶⁷

This becomes one of the central questions in the EPA rule—what exactly is the legal and scientific connection between a tribal treaty right and the use of a specific risk level as a factor in the equation that derives water quality criteria. Consistent with its long-standing refusal to provide a legal, scientific and policy basis for its demands or engage in any meaningful public process, the EPA general counsel in an internal email directed EPA Region 10 to respond to Ecology by referring Ecology back to EPA’s March 23, 2015 comment letter and EPA’s February 2, 2015 decision to disapprove in part human health water criteria developed by the State of Maine.⁶⁸ In a December 11, 2012 telephone call between EPA staff and Idaho Tribes, EPA was specifically asked whether EPA would require “subsistence fishers to be protected to the same extent as the general population.”⁶⁹ Christine Psyk, Associate Director for Region 10, responded that **“EPA would not because that requirement does not appear in EPA regulations or guidance.”**⁷⁰

It is not surprising that Ecology’s subsequent July 2015 draft responses to comments on the proposed Washington State rule concluded that there is no legal basis for requiring criteria based on tribal consumption rates using a 10^{-6} risk level.⁷¹

EPA’s proposed and final rule exemplify its continued failure to provide a sound scientific rationale for its demands regarding risk policy and the fish consumption rate. In the EPA Final Rule the agency abandoned the treaty rights “analysis” contained in the proposed rule

⁶⁶ M. Szlag, Email to J. Edgell (July 14, 2015)(06440-2); K. Brown, Email to B. Duncan (June 5, 2015)(06466-6467); M. Szlag, Email to P. Ford (March 17, 2015)(06464-6465), EPA FOIA Response, EPA-R10-2015-008998 (August 2015).

⁶⁷ *Id.*, M. Szlag, Email (06442).

⁶⁸ *Id.*, M. Szlag, Email (06440).

⁶⁹ D. Ostermann, Letter to EPA at 2 (January 9, 2013)(02308-2310).

⁷⁰ *Id.* (emphasis added).

⁷¹ Ecology, Draft Responses to Comments on Proposed State Rule (July 2015) (04758).

and replaced it with a new and non-existent “treaty-reserved subsistence fishing right” in an effort to support its arbitrary and politically based human health criteria.

B. Tribal Treaty Rights Do Not Support EPA’s Final Rule

Three key decisions drive EPA’s preferred human health criteria. EPA (1) treats the Indian tribal population as the “target general population”, (2) adopts a cancer risk level of 10^{-6} to be applied to that newly defined “target general population”, and (3) uses a fish consumption rate based on unsuppressed fish consumption. These decisions are based not on sound scientific rationale, as required by the CWA, but rather on EPA’s own novel and expansive interpretation of tribal treaty fishing rights. In its proposed rule, EPA presented no legal analysis whatsoever to support its interpretation of the treaties. In its Final Rule, EPA invents a new and non-existent “treaty-reserved subsistence fishing right” as support for its interpretation. In fact, the federal courts have never interpreted the treaty reserved fishing right as a right to take and consume fish at a subsistence rate, and there is no legal support for EPA’s attempt to use the treaty fishing right as a rationale for imposing its preferred human health criteria on the State of Washington.⁷²

EPA’s proposed rule did not cite to any legal authority supporting its reading of tribal fishing rights¹. Moreover, EPA’s stated interpretation of the treaty rights, and its reliance on those “rights” in deriving human health criteria, was described in the proposed rule using ambiguous and inconsistent language suggesting that EPA itself was unsure of exactly what “rights” it was talking about, and giving the public little idea as to how EPA had used the “rights” as the basis for its decision-making. EPA alternately described its preferred criteria as necessary “to effectuate” treaty rights (80 Fed Reg. at 55,068 (§ IV.C.b)); and then to “effectuate and harmonize” such rights (*Id.* at 55,067 (§ IV.A.)). At one point EPA stated that the treaty rights merely “informed” EPA’s decisions (*Id.* at 55,066 (§ III.A)) at other times that EPA had “considered” treaty rights (*Id.* at 55,067 (§ IV.A); 55,068 § IV.C.b)). More than once EPA described its chosen human health criteria as based on what the treaties “could” require: “[W]here tribal treaty or other reserved fishing rights apply, selecting a FCR that reflects unsuppressed fish consumption *could be necessary in order to satisfy such rights*” (*Id.* at 55,066 (§ II.B.c)); “Independently, the treaties themselves *could require higher levels of protection*. The treaties themselves *could be interpreted to require a certain level of risk*; e.g. a *de minimis* level of risk that would most reasonably approximate conditions at the time the treaties were signed and the fishing rights were reserved” (emphasis added). *Id.* at 55,068 (§ IV.C.b)).

Perhaps unsurprisingly, given the number of comments pointing out the lack of any legal basis for EPA’s stated treaty rights position, EPA in the Final Rule has now discovered a new legal theory which supposedly supported its reading of the treaties all along. Gone from the Final Rule is the proposed rule’s ambiguous language about what the treaties “could” require;

⁷² At the time of EPA’s proposed rule, the only indication from EPA as to the legal basis for its treaty rights position came in response to an email request by the Department of Ecology for “a legal opinion or rationale on how risk level and treaty tribal rights are connected, and why 10^{-6} is looked upon by EPA as fulfilling the rights, and 10^{-5} is not.” EPA staff directed Ecology to EPA’s disapproval of the Maine water quality standards and associated documents, including the Maine Tribal Fishing Rights Letter. See n.68. EPA FOIA Response. Although not referenced in the proposed rule, the Maine Tribal Fishing Rights is referenced in the Final Rule. 81 Fed. Reg. at 85,423 n. 39.

somewhere between the proposed and final rule EPA has decided exactly what the treaties require. The right described as a “tribal reserved fishing right” in the proposed rule is now styled as a “treaty-reserved subsistence right” in the Final Rule. Whereas the word “subsistence” appears only twice in the proposed rule, it appears sixty times in the Final Rule, as EPA states for the first time that “[r]elevant case law, including Supreme Court precedents, unequivocally confirms that the treaty-reserved right to take fish includes the right to take fish for subsistence purposes.” (81 Fed Reg. at 85,423 (§ III.B.b)). However, the relevant case law—including that cited by EPA in the Final Rule—do not support EPA’s position, and in fact say just the opposite. The treaties only reserve to the Indian tribes the right to a fair share of the available fish.

i. There is no “treaty-reserved subsistence right” to take fish

Reserved treaty rights are not unlimited in scope. The right is shared with other citizens and is similar to a cotenancy. *Anderson v. Evans*, 314 F.3d 1006 (9th Cir. 2002). And tribal fishers may be subject to federal and state regulation, as long as that regulation is non-discriminatory and for conservation purposes. *Puyallup Tribe v. Dep’t of Game of Washington*, 391 U.S. 392, 398 (1968); *United States v. Oregon*, 657 F.2d 1009, 1016-17 (1981). Although treaties are to be interpreted liberally in favor of the Indians, it has long been the law that Indian treaties “cannot be re-written or expanded beyond their clear terms to remedy a claimed injustice or to achieve the asserted understanding of the parties.” *Choctaw Nation of Indians v. United States*, 318 U.S. 423, 432 (1943); *See also Gros Ventre Tribe v. United States*, 469 F.3d 801, 813 (9th Cir. 2006) (“Whatever duty exists at law today must be expressly set forth in statutes or treaties.”).

The treaties at issue here were negotiated by territorial Governor Isaac Stevens in 1854 and 1855 with several northwest Indian tribes, for the principal purpose of extinguishing Indian claims to land in what is now Washington State. *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n (“Fishing Vessel”)*, 443 U.S. 658, 661-62 (1979). A critical component of the Stevens Treaties was the reserved “right of taking fish, at all usual and accustomed grounds and stations. . . in common with all citizens of the Territory.” Federal courts began to recognize and interpret this treaty right as early as 1905. *See United States v. Winans*, 198 U.S. 371 (1905). The Supreme Court also held in the early 1900s that the treaties guaranteed to tribes access to all of their usual and accustomed fishing grounds, including those off-reservation. *See Seufert Bros. Co. v. United States*, 249 U.S. 194 (1919); *Winans*, 198 U.S. 371 (1905). Interpretation of the treaty right to take fish accelerated with a suit brought in 1970 by fourteen tribes and the federal government against the state of Washington, resulting in the “Boldt decision,” which was ultimately upheld by the U.S. Supreme Court in *Fishing Vessel*.

In *Fishing Vessel*, the Supreme Court held that “[b]oth sides have a right, secured by treaty, to take a fair share of the *available* fish.” *Fishing Vessel*, 443 U.S. at 684-85 (emphasis supplied). The right is more than merely a right to compete with nontreaty fishermen, but rather reserves for the tribes “the right to take a share of each run of fish that passes through tribal fishing areas.” *Id.* at 679. In determining what constitutes a fair share of fish, the Court viewed a tribal share of 50% of the available fish as a *ceiling*, which could be reduced if circumstances changed and a lesser quantity of fish was sufficient to meet the tribes’ “moderate living” needs. *Id.* at 685-89.

The underpinning of EPA's entire position with regard to cancer risk level, target population, and FCR is its assertion that the treaties reserve to tribes a right to take the amount of fish reflecting an unsuppressed, subsistence level of consumption. But in *Fishing Vessel*, the Supreme Court specifically considered and rejected the tribes' argument that the Stevens treaties "had reserved a pre-existing right to as many fish as their commercial and subsistence needs dictated." *Fishing Vessel*, 443 U.S. at 670, 679, 684-687. Other courts have consistently held that the treaty right to take fish does not include a right to take an amount of fish at the subsistence level existing when the treaties were signed. See *United States v. Adair*, 723 F.2d 1394 (9th Cir. 1983) (confirming to the Klamath Tribe an amount of water necessary to support its reservation hunting and fishing rights as currently exercised to maintain the livelihood of Tribe members, "not as these rights once were exercised by the Tribe in 1864"); *Nez Pearce Tribe v. Idaho Power Co.*, 847 F. Supp. 791, 808-10 (D. Idaho 1994) (holding that "Indian tribes do not have an absolute right to the preservation of the fish runs in their original 1855 condition, free from all environmental damage caused by the migration of increasing numbers of settlers and the resulting development of the land"). The Ninth Circuit has also confirmed that the treaty right to take fish does not entitle tribes to a particular minimum allocation of fish. *U.S. v. Washington*, 759 F.2d 1353, 1358-59 (9th Cir. 1985). There is simply no basis in law for EPA's extraordinary assertion that the treaties require that Washington's human health criteria be based on a subsistence level of fish consumption "regardless of whether such consumption is occurring today." 81 Fed. Reg. 85,425 (§ III.B.e).⁷³

1. EPA's treaty rights theory is not supported by any subsidiary environmental right

In a footnote to the Final Rule, EPA makes another argument not contained in its proposed rule, appearing to read the treaty right to a share of available fish as containing an implied guarantee or "subsidiary right" to a certain quality of fish habitat or environment. However, rather than finding any such broad environmental servitude, courts have held that at most the treaties impose on the state a duty not to take actions that will harm fish runs.

The issue of whether the treaty right to take fish includes an implied "environmental" right has been addressed in two lines of cases. In Phase II of *U.S. v. Washington*, the Ninth Circuit overturned a district court decision and held that in *Fishing Vessel* the Supreme Court "did not adopt a comprehensive environmental servitude." *U.S. v. Washington*, 694 F.2d 1374, 1381 (1982). That decision was later vacated on procedural grounds. *U.S. v. Washington*, 759

⁷³ As the Idaho Department of Environmental Quality noted in its responses to EPA's comments on Idaho's proposed human health water quality criteria and in its subsequently submitted criteria, there is also no legal support for EPA's position that tribal fishing rights mandate that tribes be treated as the general population. Idaho Department of Environmental Quality, Water Quality: Docket No. 58-0102-1201 Proposed Rule Rulemaking and Public Comment Summary, at 21 (07312-7348); Idaho Human Health Criteria Update Justification and Compliance with Clean Water Act (December 2016) at 11. EPA has promulgated state-wide criteria to protect *all* Washington citizens, including tribal members. According to the 2015 census, Washington's Native American and Alaska Natives populations combined constitute just 1.9% of Washington's population. See <http://www.census.gov/quickfacts/table/PST045216/53,00> The Indian population in Washington is an obvious subpopulation of the entire state, and should be treated as such.

F.2d 1353 (9th Cir. 1985) (en banc). However, the Ninth Circuit “did not overrule its decision or reverse the analysis of the legal issues and its reasoning.” *Nez Pearce Tribe*, 847 F. Supp. at 808.

In subsequent litigation, the Western District of Washington held on cross motions for summary judgment that the treaty right to take fish imposes a duty on the State of Washington to refrain from building or operating culverts that hinder fish passage and thus decrease the number of fish available for tribal harvest. *U.S. v. Washington*, No. CV 70-9213, 2007 WL 2437166 (2007). After a bench trial the Court issued a permanent injunction directing the state to correct the barrier culverts. *U.S. v. Washington*, No. CV 70-9213, 2013 WL 1334391 (2013). The district court emphasized that the state’s duty not to block fish passage “is not a broad ‘environmental servitude’ or the imposition of an affirmative duty to take all possible steps to protect fish runs. . . but rather a narrow directive to refrain from impeding fish runs in one specific manner.” *U.S. v. Washington*, No. CV 70-9213, 2007 WL 2437166 at *10 (2007); *U.S. v. Washington*, No. 70-9213, 2013 WL 1334391 at *24 (2013) (“it is a narrow and specific treaty-based duty that attaches when the State elects to block rather than bridge a salmon-bearing stream with a roadbed”). The Ninth Circuit Court of Appeals’ recent affirmance of the district court decision was similarly narrowly based on the lower court’s factual findings that the consequence of the state’s building and maintaining the barrier culverts had been to diminish the supply of fish, and that if the culverts were replaced or modified to allow free passage of fish, several hundred thousand additional mature salmon would be produced every year. *U.S. v. Washington*, 827 F.3d 836, 853 (9th Cir. 2016).⁷⁴

Most importantly, even if the treaties did contain some implied right to water quality or habitat protection, any such right is fully satisfied by Washington’s adopted human health criteria. There is no scientific rationale for EPA’s assumption that setting water quality standards that treat the tribal population as the target general population, establish a cancer risk level of 10^{-6} , and utilize an unsuppressed fish consumption rate, would be more protective of the habitat than the approach to standards consistently used by EPA in the past. Nor is there evidence that EPA’s past approach to water quality standards—using the general population as the target population, and allowing states to choose a cancer risk level of either 10^{-5} or 10^{-6} so long as high consuming subpopulations are protected to 10^{-4} —either has caused or will cause damage to the fisheries. The situation here is thus unlike the culverts case, where the court found clear evidence that the barrier culverts were diminishing fish quantity and thus adversely affecting the treaty fishing right. Finally, to the extent that Washington’s fish populations may be impacted by poor water

⁷⁴ Although EPA suggests in the Final Rule that the Ninth Circuit’s decision in the culverts case supports the concept of an affirmative treaty right to a certain water quality, EPA’s position is directly contrary to that taken by the Department of Justice at oral argument in that case. The DOJ attorney represented to the Court that

As we see this right, it’s a purely negative one. It says to the State you can’t take action which blocks fish passage. It’s not a positive right that says the State is responsible for restoring habitat or restoring the fish. The District Court did not put it in those terms at all. This is only about actions of the State that have a direct effect on the fish runs by blocking a certain amount of habitat.

Transcript of oral argument in *USA v. State of Washington*, Case No. 13-35474 (9th Cir., Oct. 16 2015) at 16 (6964-6985).

quality, those populations are already protected by Washington's EPA-approved aquatic life criteria.⁷⁵ See WAC 173-201A-200, 210, 240.

ii. EPA has no authority to interpret tribal treaties

In its Final Rule EPA cites for the first time to CWA § 511(a)(3), suggesting that this section of the Clean Water Act obligates it to “consider” tribal treaties to ensure that EPA’s actions are “in harmony” and “do not conflict” with such treaties. This provision of the Clean Water act simply states that the CWA should not be construed as “affecting or impairing the provisions of any treaty of the United States.” 33 U.S.C. § 1371(a)(3). This savings clause clarifies that the CWA does not overrule or take precedence over treaties. It does not give EPA unfettered discretion to invent a “treaty-reserved subsistence right” and then assert that only its preferred human health criteria is “in harmony” with that “right.”

It is particularly remarkable that EPA would base its derivation of Washington’s human health criteria on its interpretation of Indian treaty language because EPA has no authority to interpret Indian treaties. EPA’s interpretation of the CWA, a statute which it administers, may under certain circumstances be entitled to deference pursuant to *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778 (1984). But EPA’s interpretation of Indian treaties is not entitled to deference. See *Maine v. Johnson*, 498 F.3d 37, 45 (1st Cir. 2007). A precondition to deference under *Chevron* is a congressional delegation of administrative authority. *Adams Fruit Co., Inc. v. Barrett*, 494 U.S. 638, 649-50 (1990). EPA has not been delegated the authority to interpret Indian treaties. *Maine*, 498 F.3d at 45. To the contrary, the federal courts have sole jurisdiction over questions of treaty-guaranteed rights. See 28 U.S.C. § 1362; *Confederated Salish and Kootenai Tribes of Flathead Reservation, Montana v. Flathead Irr. & Power Project*, 16 F. Supp. 1292, 1295 (D. Mont. 1985). Moreover, to the extent that EPA is relying upon the Department of Interior Solicitor General’s interpretation of the Stevens treaties in the Maine Tribal Fishing Rights letter, that interpretation is similarly not entitled to deference. *Cherokee Nation of Oklahoma v. Norton*, 389 F.3d 1074, 1078-79 (10th Cir. 2004) (Department of Interior’s position based solely on its analysis of Indian treaties and agreements was not afforded any deference “because Congress did not give [the Department] the discretion to administer those treaties and agreements”).

**C. EPA Has Violated APA Notice and Comment Rulemaking Requirements
Requiring Reference to Legal Authority**

As outlined above, EPA’s interpretation of treaty rights contained in the proposed rule *cited to no legal authority whatsoever*. Without any disclosure in the proposed rule of what legal authority EPA was purporting to rely upon, commenters on the treaty rights portions of the proposed rule were left to guess, and comment accordingly. Although it was not referenced in the proposed rule, some commenters were aware of the Maine Treaty Rights Letter from the Solicitor General and EPA’s reliance on that letter in its disapproval of Maine’s Water Quality Standards. However, as explained above, the treaty rights interpretation set out by EPA in the final rule is a completely new analysis, not contained in the proposed rule, and not set forth in the

⁷⁵ Notably, EPA is deferring action on WAC 173-201A-510(4)(a)(i), Washington’s newly adopted compliance schedule for aquatic life uses, stating that it must first complete an Endangered Species Act consultation.

Solicitor General's letter. Not only was EPA's invention of a new "treaty-reserved subsistence fishing right" in the final rule not put forth in the proposed rule, the word "subsistence" barely even appeared in the proposed rule. Similarly, EPA's new reliance in the final rule on CWA § 511 as providing it with the authority to interpret a tribal treaty right and engraft that right onto the Clean Water Act was not put forth in the proposed rule – CWA § 511 was never mentioned in the proposed rule.

Federal agencies must conduct rulemaking in accordance with the Administrative Procedures Act, which requires public notice of a rule and a meaningful opportunity for public comment on those changes. 5 U.S.C. § 553(b), (c). The notice of proposed rulemaking must include a "reference to the legal authority under which the rule is proposed." 5 U.S.C. § 553(b)(2). Such reference "must be sufficiently precise to appraise interested persons of the agency's legal authority to issue the proposed rule." *Louisiana Forestry Association, Inc. v. Solis*, 889 F. Supp. 2d 711, 732 (E.D. Pa. 2012) (citing Attorney General's Manual on the Administrative Procedure Act 29 (1947)). The required specification of legal authority must also be done "with particularity." *Global Van Lines, Inc. v. I.C.C.*, 714 F.2d 1290, 1298 (5th Cir. 1983) (emphasis in original). Because legal authority for EPA's treaty rights statements did not appear in the proposed rule, and because the legal theory put forth its final rule had never previously been disclosed, affected stakeholders were given no opportunity in the rule-making process to present legal analysis challenging that theory. EPA's Final Rule therefore violated the APA.⁷⁶

D. Just as with Trust Responsibilities to the Tribes, Compliance with the CWA is Sufficient to Meet Tribal Treaty Rights

Notably, EPA's position in its final rule is contrary to the position taken in recent briefing before the federal district court for the Western District of Washington, in which EPA successfully asserted that its compliance with the Clean Water Act and its regulations satisfied any federal trust responsibility owed to the Spokane Indian Tribe. *Sierra Club v. McLerren*, Case No. 2:11-cv-01759-BJR Docket No. 91 at 40-43 (January 29, 2014). EPA explained that the scope of its trust responsibility is not defined by common law fiduciary duties or those imposed on a private trustee, but rather must be based on specific statutes and regulations. *Id.* at 41-42 (citing *United States v. Jicarilla Apache Nation*, 131 S. Ct. 2313, 2323, 2325 (2011)). As EPA asserted:

There is a "distinctive obligation of trust incumbent upon the Government in its dealings with [Indian tribes]." *Gros Ventre Tribe v. United States*, 469 F.3d 801, 810 (9th Cir. 2006) (quoting *United States v. Mitchell*, 463 U.S. 206, 225 (1983)). However, "[w]ithout an unambiguous provision by Congress that clearly outlines a federal trust responsibility, courts must appreciate that whatever fiduciary obligation otherwise exists, it is a limited one only." *Shoshone-Bannock Tribes v. Reno*, 56 F.3d 1476, 1482 (D.C. Cir. 1995). While that general trust relationship allows the federal government to consider and act in the tribes' interests in taking

⁷⁶ EPA's newly discovered "treaty reserved subsistence fishing right" and its reliance on CWA § 511 also "raise novel legal or policy issues arising out of legal mandates" and thus render the Final Rule a significant regulatory action requiring full OMB review. *See infra*, at 63.

discretionary actions, *it does not impose a duty on the federal government to take action beyond complying with generally applicable statutes and regulations.* *Jicarilla*, 131 S. Ct. at 2325. Accordingly, in the absence of a specific duty that has been placed on the government with respect to the Tribe, the United States' general trust responsibility "is discharged by the agency's compliance with general regulations and statutes not specifically aimed at protecting Indian tribes." *Morongo Band of Mission Indians v. F.A.A.*, 161 F.3d 569, 574 (9th Cir. 1998); *Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 479 (9th Cir. 2000) (Bureau of Land Management's approval of gold mine satisfied trust obligations by the agency's compliance with NEPA); *Gros Ventre*, 469 F.3d at 814.⁷⁷

Judge Rothstein ruled in favor of EPA on the trust responsibility issue, agreeing that EPA had discharged its trust duty by complying with the CWA. *Sierra Club v. McLarren*, Case No. 2:11-cv-01759-BJR Docket No. 120 at 23 (March 16, 2015).

Just as in *Sierra Club*, any responsibility owed by EPA to Indian tribes based upon the treaty fishing right at issue here is discharged by EPA's compliance with the CWA, the aim of which is to protect the water quality for the entire population. The Stevens treaties do not impose any specific duty on EPA to adopt a particular cancer risk or fish consumption rate for the benefit of the tribes. *See Shoshone-Bannock* (existence of treaty-created right to hunt did not impose duty on the federal government to litigate tribal water rights claims); *Vigil v. Andrus*, 667 F.2d 931, 934 (10th Cir. 1982) (treaty obligation to support and educate Indians did not expressly impose a duty on government to provide free lunches to all Indians); *Center for Biological Diversity v. U.S. Bureau of Land Mgt.*, 2015 WL 794327 *2 (D. Nevada February 24, 2015) (treaty with Goshute and Shoshone Indians did not impose an "enhanced" statutory duty on federal government beyond what [environmental statutes] already require; "the federal government's compliance with the [environmental statutes] satisfies its general trust obligations to Indian tribes"). As EPA itself argued before Judge Rothstein, EPA's responsibility to the tribes is discharged by complying with the CWA. And compliance with the CWA means basing Washington's human health criteria on sound scientific rationale.

E. Executive Orders and EPA Policies Regarding Consultation and Coordination with Tribes Do Not Support EPA's Final Rule

EPA repeatedly refers in both the proposed and Final Rule to its consultation with Indian tribes as justification for the selection of an unsuppressed FCR of 175 g/day and a cancer risk level of 10^{-6} .⁷⁸ In fact, EPA admits that it had insufficient evidence of unsuppressed FCR for the

⁷⁷ *Sierra Club v. McLarren*, Case No. 2:11-cv-01759-BJR Docket No. 91 at 42 (January 29, 2014)(04811-4860.

⁷⁸ *See* EPA Proposed Rule, 80 Fed. Reg. 55,066 (§ II.B.c) ("If sufficient data regarding unsuppressed fish consumption levels are unavailable, consultation with tribes is important in deciding which fish consumption data should be used"); 80 Fed. Reg. 55,067 (§ IV.C.a) (FCR "reflects input received during consultation with tribes", "EPA considered the input received during consultation with tribes when selecting which fish consumption data would be used to estimate a FCR for calculating human health criteria. . ."); 80 Fed. Reg. 55,068 (§ IV.C.b) ("EPA considers 10^{-6} to be sufficiently protective, and the tribes have supported this during consultation"); 80 Fed. Reg. at 55,074 (§ VI.F) ("At these meetings, the tribes consistently emphasized that the human health criteria should be derived using at least a minimum FCR value of 175 g/day, [and] a cancer risk level of 10^{-6} . . ."). *See also* n.64, at 5

tribes, and lacking such data, allowed the tribes to dictate both the FCR and the cancer risk level.⁷⁹ EPA thus relies on its obligation to consult and coordinate with Indian tribes—and the tribes’ preferences as to the FCR and cancer risk—rather than complying with the CWA and promulgating human health criteria based on sound scientific rationale. EPA is required to consult and coordinate with Indian tribes. However, that requirement does not allow EPA to circumvent the requirements of the CWA.

EPA’s obligation to consult with Indian tribes regarding tribal treaty rights is not new. It dates back to at least 1994, with a memorandum issued by President Clinton.⁸⁰ See EPA Policy for the Administration of Environmental Programs on Indian Reservations” Memorandum on Government-to-Government Relations with Native American Tribal Governments, 59 Fed. Reg. 22,951 (Apr. 29, 1994) (“1994 Presidential Memorandum”). This Presidential Memorandum was followed by Executive Order 13084 “Consultation and Coordination with Indian Tribal Governments”, 63 Fed. Reg. 27655 (May 14, 1998) (references tribal treaty rights in introduction and §§ 2, 5), which was replaced two years later with Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments”, 65 Fed. Reg. 67349 (Nov. 6, 2000) (references tribal treaty rights in §§ 2(a), 2(b), 3(a), 5(d)).

In 2009 President Obama issued a Presidential Memorandum on Tribal Consultation, 74 Fed. Reg. 57881 (Nov. 5, 2009) (“2009 Presidential Memorandum”); directing that all executive departments and agencies develop a detailed plan of actions each agency would take to implement Exec. Order No. 13175. In compliance with the 2009 Presidential Memorandum, EPA issued its EPA Policy on Consultation and Coordination with Indian Tribes (“EPA Consultation Policy”) on May 4, 2011. As with the executive orders and the presidential memoranda, this policy specifically references tribal treaties. EPA Consultation Policy at 3.⁸¹

By their terms, the tribal consultation executive orders and presidential memoranda are intended only to improve the internal management of the executive branch, and do not “create

(“[T]he EPA supports the state’s decision to derive the human health criteria using a FCR of 175 g/day so long as the state also retains a cancer risk level of 10^{-6} , *which the tribes have generally viewed as a compromise minimum value in tribal consultation*”) (emphasis added)(07237). See EPA Final Rule, 81 Fed. Reg. 85,426 (§ III.B.e) (“Consultation with tribes is important to ensure that all data and information relevant to this [FCR suppression data] issue are considered”); 81 Fed. Reg. 85,426 (§ III.C.a) (“The Washington tribes have generally agreed that 175 g/day is acceptable for deriving protective criteria at this time. . . .”); 81 Fed. Reg. 85,427 (§ III.C.b) (“Throughout tribal consultation, the tribes generally supported 175 g/day as an acceptable FCR . . . when accompanied by other protective input parameters. . . .”); 81 Fed. Reg. 85,435 (§ V.F) (“At these meetings, the tribes consistently emphasized that the human health criteria should be derived using at least a minimum FCR value of 175 g/day, [and] a cancer risk level of 10^{-6}”).

⁷⁹ *Id.*

⁸⁰ The Bureau of Indian Affairs first promulgated internal guidelines for consultation with Indian tribes in 1972, which were broadened in 1977. *Lower Brule Sioux Tribe v. Deer*, 911 F. Supp. 395, 398-99 (D.S.D. 1995). In 1984, EPA issued its own policy establishing coordination and cooperation with tribes as to their environmental interests on reservation lands. EPA, Policy for the Administration of Environmental Programs on Indian Reservations (November 8, 1984)(06436-6439).

⁸¹ Although the EPA Consultation Policy encompasses consultation regarding tribal treaties, EPA in August 2015 released a new draft Guidance for Discussing Tribal Treaty Rights. EPA, EPA Policy on Consultation and Coordination with Indian Tribes: Draft Guidance for Discussing Tribal Treaty Rights.

any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.” 1994 Presidential Memorandum; Exec. Order No. 13084 § 7; Exec. Order No. 13175 § 10; 2009 Presidential Memorandum. They are “intended primarily as a political tool for implementing the President’s personal Indian affairs policy. . . .” *Lower Brule Sioux Tribe v. Deer*, 911 F. Supp. 395, 401 (D. S. D. 1995). They do not have the force of law and do not establish legal standards. *Hoopa Valley Tribe v. Christie*, 812 F.2d 1097, 1103 (9th Cir. 1986) (holding that 1994 Presidential Memorandum does not create any enforceable duty to consult with tribes).

Moreover, compliance with the executive orders and the Memorandum are specifically limited to those actions consistent with existing law. “[A]gencies shall adhere, *to the extent permitted by law*, to the following criteria when formulating and implementing policies that have tribal implications. . . .” Exec. Order No. 13175 § 3; “Executive departments and agencies shall carry out the provisions of this memorandum *to the extent permitted by law and consistent with their statutory and regulatory authorities* and their enforcement mechanisms.” 2009 Presidential Memorandum. Presidential executive orders cannot impose legal requirements on the executive branch that are inconsistent with a statute—such as the CWA—duly enacted by Congress. *United States v. Rhode Island Dep’t of Corr.*, 81 F. Supp. 3d 182, 188 (D.R.I. 2015) (*citing Chamber of Commerce of U.S. v. Reich*, 74 F.3d 1322, 1332-34 (D.C. Cir. 1996)); *Utah Ass’n of Counties v. Bush*, 316 F. Supp. 2d 1172, 1184 (D. Utah 2004).

Appropriately, EPA’s own consultation policy is entirely procedural, outlining how and when consultation is to occur, and the roles and responsibilities of those involved in the consultation process. The policy in no way *requires* that the agency adopt the tribes’ position. Thus, to the extent that EPA’s internal policies impose a duty on EPA to consult with tribes while promulgating water quality standards, that consultation does not require that EPA adopt whatever FCR or cancer risk level the tribes insist upon during that consultation. *Hoopa Valley Tribe*, 812 F.2d at 1103 (finding that BIA consultation guidelines were not binding, but even if they were, there was no violation of APA where tribe was consulted even though tribe’s advice was not accepted); *Lower Brule Sioux Tribe*, 911 F. Supp. at 401 (holding that although BIA guidelines require meaningful tribal consultation “that is not to say the BIA must obey those who are consulted or that the BIA must accept their advice”). Consultation is not the same as obeying those who are consulted. *Hoopa Valley Tribe*, 812 F.2d at 1103.

Executive orders, presidential memoranda and EPA policies simply do not allow tribes to dictate the appropriate cancer risk level and FCR. EPA has been clear in its proposed and final rules that it has allowed the tribes to do exactly that. The tribes “repeatedly asked” and “consistently emphasized” that the HHC “should be derived” using at least a minimum FCR of 175 g/day and a cancer risk level of 10^{-6} , “which the tribes have generally viewed as a compromise minimum value in tribal consultation.”⁸² Under the CWA EPA must base WQS on sound scientific rationale—not on what the tribes express as their preference during the consultation process. Choosing to use a FCR of 175 g/day and a cancer risk level of 10^{-6} because

⁸² See n.78.

the tribes “consistently emphasized” in meetings that EPA “should” do so violates the CWA and its implementing regulations.

F. There is no Basis in EPA Policy for the Risk Policy used by EPA in the Final Rule

In its rulemaking, EPA misrepresented the Washington risk policy as setting a risk level for human health criteria applicable to all consumers at a level of one in one million. Prior to August 1, 2016, under WAC 173-201A-240(5) Ecology applied the one in one million (or 1×10^6) risk level to the per capita consumption rate of the general population and not to more highly exposed subpopulations. EPA established this as a matter of law in *Dioxin/Organochlorine Center v. Clarke*, 57 F.3d 1517, 1524 (9th Cir. 1995).⁸³

EPA fails to acknowledge or disclose that Ecology has interpreted and publicly stated that its risk policy for human health criteria in the state Water Quality Standards, WAC 173-201A-240(6), is intended to apply to the per capita consumption rate of the general population.⁸⁴ EPA also misrepresents that EPA and not Washington set the risk level for application of the NTR in Washington. Through the NTR process, EPA offered states the option of human health criteria calculated based on either a 10^{-6} or 10^{-5} risk level for the general population. Washington opted to use a 10^{-6} risk level.⁸⁵ In the context of the NTR, however, this risk level is applicable to the per capita consumption rate of the general population on the assumption that NTR criteria are protective of higher consuming subpopulations at a 10^{-4} risk level, and is consistent with long-standing EPA policy.

EPA and Washington have never assumed that the 10^{-6} risk policy set forth in WAC 173-201A-240(6) would apply to all consumers of fish. Otherwise, Washington would not have adopted, nor would EPA have approved, coverage under the NTR where the criteria are based on a range of acceptable risk levels from 10^{-6} to 10^{-4} .⁸⁶ EPA described this in its brief in the *Dioxin* case as a choice “to provide a high level of protection for the average population in order to provide what they [Washington and other states] deem adequate protection for more sensitive populations.”⁸⁷

The scope and intent of the 10^{-6} risk policy in WAC 173-201A-240(6) was a central issue in a challenge to a dioxin water quality improvement plan or Total Maximum Daily Load (“TMDL”) allocation developed by EPA for the Columbia River. The dioxin TMDL was based on the same assumptions for the dioxin criterion in the NTR, including a FCR of 6.5 g/day. The TMDL was challenged in federal court on the basis of evidence that actual FCRs on the

⁸³ EPA, Brief for the Defendant-Appellees, *Dioxin/Organochlorine Center v. Clarke*, Nos. 93-35973 & 93-36000 (May 31, 1994) (00899-0967).

⁸⁴ Ecology, Washington State Water Quality Standards: Human Health Criteria and Implementation Tools, Overview of Key Decisions in Rule Amendment, (January 2015)(Publication No. 14-10-058)(00001-0073).

⁸⁵ NTR, 57 Fed. Reg. 60,848-01, 60868 (00768-847); 40 C.F.R. §131.36(b)(14)(iii)(00848-0860).

⁸⁶ WAC 173-201A-240(6). EPA’s “policy in the NTR [is] to select the risk level that reflect[s] the policies or preferences of CWA programs in the affected States.” 65 Fed. Reg. 31,682, 31,699 (May 18, 2000)(00861-0898).

⁸⁷ See n.83. EPA, Brief for the Defendant-Appellees.

Columbia River for recreational fishers and Tribes was as high as 150 grams per day. The challengers contended that EPA should have applied WAC 173-201A-240(6) to derive a water quality criterion for dioxin that would protect all fish consumers to a level of 10^{-6} based on the higher FCR. In *Dioxin/Organochlorine Center v. Clarke*, 57 F.3d 1517, 1524 (9th Cir. 1995), the court concluded that Washington did not intend to mandate a 10^{-6} risk level for every fish consumer. The Ninth Circuit held that “the one-in-a-million risk level mandated by the state water quality standards for the general population does not necessarily reflect state legislative intent to provide the highest level of protection for *all* subpopulations but could reasonably be construed to allow for lower yet adequate protection of specific subpopulations.” 57 F.3d at 1524 (emphasis in original).⁸⁸

In *Dioxin/Organochlorine Center*, EPA successfully argued that the mere fact that actual fish consumption in Washington is greater than the FCR in the TMDL (the same as the NTR) does not mean that the national criteria violate the state risk policy to protect human health under WAC 173-201A-240(6). EPA argued that the FCR and risk levels in the federal criteria are based on consumption of maximally contaminated fish, and are not intended to reflect actual consumption rates.⁸⁹ EPA also argued that the 6.5 grams per day fish consumption rate was not intended to accurately represent total consumption of fish, but instead the ingestion rate of a given contaminant.⁹⁰ According to EPA, the fish consumption rate used in the NTR was “intended to represent only a subset of total fish consumption.”⁹¹ The FCR is the assumed amount of “maximum residue fish” consumed.⁹² EPA further asserted that consuming anadromous fish, like salmon, is unlikely to cause ingestion of contaminants at a rate equal to consuming maximum residue fish.⁹³ EPA explained: “[T]he total fish consumption rate of various individuals is not determinative; the central question is whether the actual rate of ingestion [of a contaminant] is greater than that assumed by EPA.”⁹⁴

To understand Washington’s prior risk policy, one must take into consideration the timing and sequence of the state’s adoption of its risk policy and when the state was formally subject to the NTR. The risk policy, WAC 173-201A-240(5), was promulgated as a state regulation in October 1992.⁹⁵ The promulgation of the regulation referencing the NTR was included with revisions to the state Water Quality Standards, WAC 173-201A-240(6), five years

⁸⁸ The risk policies in the NTR were also affirmed in *Natural Resources Defense Council v. EPA*, 16 F.3d 1395 (4th Cir. 1993)(rejecting argument that 6.5 grams per day FCR failed to protect subpopulations with higher than average fish consumption). EPA’s range of acceptable risk levels was also upheld in other contexts. *E.g.*, *Ohio v. EPA*, 997 F.2d 1520, 1533 (D.C. Cir. 1993)(describing range of 10^{-6} to 10^{-4} as adequately protective of human health).

⁸⁹ *Natural Resources Defense Council v. EPA*, 16 F.3d 1395, 1402 n.11 (4th Cir. 1993).

⁹⁰ See n.83. EPA, Brief for the Defendant-Appellees.

⁹¹ See n.83. EPA, Brief for the Defendant-Appellees at 44 (00954).

⁹² *Id.*

⁹³ 16 F.3d at 1403; see also n.23. EPA, Brief for the Defendant-Appellees at 44 (00954).

⁹⁴ See n.83. EPA, Brief for the Defendant-Appellees at 45 (00955); EPA’s water quality criteria guidance includes a margin of safety for water consumption. 65 Fed. Reg. 31,682, 31693 (May 18, 2000) (00861-0898).

⁹⁵ WSR 92-24-037 (00968-0971).

later in November 1997.⁹⁶ In addition to the fact that the NTR does not extend the 10^{-6} risk level to all consumers, there is the intervening ruling in *Dioxin/Organochlorine Center* that the state policy does not reflect any intent to protect high consumers to the 10^{-6} risk level. A basic rule of statutory construction provides that the failure to amend an act following a judicial construction indicates approval of the construction.⁹⁷ Thus, if Ecology believed that the risk policy was intended to more broadly apply in Washington it would have amended the regulation prior to incorporating a reference to the NTR in the state Water Quality Standards.⁹⁸

The EPA final rule is based on a misrepresentation that state risk policy requires all consumers to be protected to a risk level of 10^{-6} . EPA ignored the chemical specific risk level and accompanying risk management decision made for the state PCB criteria. EPA improperly replaced and usurped a state risk management decision.

G. EPA Misrepresents its Policy and Guidance on Risk Factors used to Derive Human Health Water Quality Criteria

In its draft and final rule the EPA misrepresented its guidance and supporting science for deriving human health water quality criteria. EPA failed to acknowledge that its 2000 Human Health Methodology provides for risk based criteria using a risk level of 10^{-6} or 10^{-5} for the 90th percentile consumption rate for the general population as long as the **median** consumption rate for highly exposed populations is protected to a level of 10^{-4} .⁹⁹ The 2000 Human Health Methodology is clear that EPA deems both 10^{-6} and 10^{-5} risk levels as acceptable for the general population,¹⁰⁰ so long as the selection provides at least a 10^{-4} risk level for the highest consumers of fish. “EPA generally regulates pollutants treated as carcinogens in the range of 10^{-6} to 10^{-4} to protect average exposed individuals and more highly exposed populations.”¹⁰¹ “EPA also believes that criteria based on a 10^{-5} risk level are acceptable for the general population as long as States and authorized Tribes ensure that the risk to more highly exposed subgroups (sport fishers or subsistence fishers) does not exceed the 10^{-4} level.”¹⁰²

EPA 304(a) Guidance addresses the need to consider carefully the impact of criteria on sensitive and subsistence populations. This guidance is reflected in the preference for local data

⁹⁶ WSR 97-23-064. (00972-1019).

⁹⁷ *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 789, 719 P.2d 531 (1986).

⁹⁸ Under controlling Washington law, the sequence of all statutes relating to the same subject matter should be considered. *Dep’t of Labor and Industries v. Estate of MacMillan*, 117 Wn.2d 222, 229, 814 P.2d 194 (1991).

⁹⁹ See n.1. NTR at 60,855.

¹⁰⁰ EPA asked states covered by the NTR to tell EPA if they preferred the human health criteria for the state be applied at a risk level of 10^{-5} . See n.25. NTR at 60,864. In general, the NTR established AWQC for states based on a 10^{-6} risk level. *Id.* at 60,860. A state could ask EPA to remove the state from the rule, and adopt human health criteria for a carcinogen at a 10^{-5} risk level. *Id.* If a state convinced EPA a 10^{-5} risk level was appropriate, public notice and comment would not be required “because the Agency has considered in this rule that criteria based on either 10^{-5} or 10^{-6} risk levels meet the requirements of the Act.” *Id.*

¹⁰¹ See n.1. NTR at 60,855; see also 65 FR 31,682, 31,699 (May 18, 2000) (00861-0898).

¹⁰² See n.3, EPA, 2000 Methodology for Human Health, at 1-12 (00074-0258); see also n.1, NTR at 60,848, 60,863 (describing 10^{-5} level as “adequately protective”).

over EPA default values for fish consumption rates.¹⁰³ That does not mean, however, that a 10^{-6} risk level becomes a baseline for all population exposures. The EPA guidance directs that more specific information on consumption rates should be used to ensure that the criteria are within the protective range of EPA risk policy guidance:

EPA understands that fish consumption rates vary considerably, especially among subsistence populations, and it is such great variation among these population groups that may make either 10^{-6} or 10^{-5} protective of those groups at a 10^{-4} risk level. Therefore, depending on the consumption patterns in a given State or Tribal jurisdiction, a 10^{-6} or 10^{-5} risk level could be appropriate. In cases where fish consumption among highly exposed population groups is of a magnitude that a 10^{-4} risk level would be exceeded, a more protective risk level should be chosen.¹⁰⁴

As seen in the above quoted passage from the 2000 Human Health Methodology, consumption patterns among subsistence populations and within a given tribal jurisdiction were considered in the methodology, despite EPA's assertions to the contrary.

Moreover, EPA has updated and amended this guidance numerous times since its publication in 2002 as documented on the EPA web site.¹⁰⁵ EPA actively considered tribal fishing rights in parallel CWA proceedings in 2001 and 2002 that were nearly contemporaneous to the 2000 guidance and predate each of its updates.¹⁰⁶

H. EPA Misrepresented Scientific Research in its Draft Rule

The EPA Final Rule failed to acknowledge that its rationale for the proposed Washington human health criteria based on the claim that "EPA often uses 10^{-6} as a *de minimis* risk level" misrepresents what EPA has long considered *de minimis* in deriving risk based criteria. EPA, across its environmental programs, the FDA and other federal agencies have consistently deemed 10^{-4} as a *de minimis* risk level when applied to a highly exposed subpopulation. EPA has provided no explanation or justification why this long-standing national consensus is no longer applicable as a matter of science and public health to deriving water quality standards in Washington.

Rather than apply its own guidance and accepted science EPA has cobbled together a rationale that treaty rights afford some *de minimis* level of exposure and that must mean that tribal consumption rates have to be applied to a one in one million risk level to afford that *de minimis* risk protection. In doing so, the EPA ignores the long standing position of EPA and FDA programs that consider any exposure within a range of 10^{-6} to 10^{-4} to be a *de minimis* risk

¹⁰³ See n.3, EPA 2000 Methodology for Human Health , at 1-12, 4-25.

¹⁰⁴ *Id.* at 2-6.

¹⁰⁵ <http://water.epa.gov/scitech/swguidance/standards/criteria/health/methodology/index.cfm>.

¹⁰⁶ EPA, Meeting Summary of the Executive Council of the National Environmental Justice Advisory Council December 3, 4, and 6, 2001 (06107-6157); *see also* EPA, Fish Consumption and Environmental Justice (00268-0452).

and a level of risk that is acceptable and insignificant for setting human health standards, including water quality standards.

In support of its rationale EPA cited one scientific study in the proposed rule 80 Fed. Reg. 55,068 n. 26: “Castorina, Rosemary and Tracey J. Woodruff (sic), *Assessment of Potential Risk Levels Associated with the U.S. EPA Reference Values*, ENVIRONMENTAL HEALTH PERSPECTIVES, Vol. 111, No. 10, page 1318.” This article, which is about air quality and not water quality standards, does not support EPA’s implication that EPA considers a 10^{-6} risk level to be a bright line standard for *de minimis* risk. The authors in fact state, “As a point of comparison, The U.S. EPA has defined 1 in 1,000,000 excess cancer risk as a *de minimis* risk level for cancer (Caldwell et al. 1998; Clean Air Act Amendments 1990; Fiori and Meyeroff, 2002; U.S. EPA 1991), **although regulatory actions are sometimes limited to instances where risk exceeds 1 in 100,000.**” (Emphasis added.)

“Fiori and Meyeroff, 2002¹⁰⁷,” one of the references cited in support of the quoted statement in the Castorina article is a proposal for a risk management approach for exposure to mutagens that applies a *de minimis* risk standard. The article provides a short but instructive summary of “regulatory precedents for negligible carcinogenic risk”:

Acceptable risk is a concept that is required because of the adoption of the no threshold theory of carcinogenicity. Setting the acceptable risk level is a risk management decision....When EPA sets an acceptable risk for the general population (as for drinking water standards), the upper bound risk level of one excess cancer per 1 million people (i.e., 10^{-6}) is used. (EPA, 1991).¹⁰⁸

The “EPA 1991” references in both articles are the same, the draft NTR.¹⁰⁹ EPA states in the draft NTR that its risk based criteria are consistent with EPA guidelines that assume carcinogenicity is a “non-threshold phenomenon” and that there is no “safe” or “no-effect levels” of exposure.¹¹⁰ Consistent with this guidance, EPA elected to use a “relatively stringent” cancer risk level of 10^{-6} as applied to the general population and deemed that protective of “subsistence fishermen” who are more exposed than the general population.¹¹¹ It was the position of EPA then, based on the law and best available science, that the use of a 10^{-6} risk level “is in part addressing the potential that highly exposed subpopulations exist by selecting a relatively stringent cancer risk level (10^{-6}) for use in deriving State-wide criteria for carcinogens.”¹¹²

¹⁰⁷ Fiori and Meyeroff, Extending the Threshold of Regulation Concept: *De Minimis* Limits for Carcinogens and Mutagens, 35, REGULATORY TOXICOLOGY AND PHARMACOLOGY, 209-16 (April 2002)(06355-6362).

¹⁰⁸ *Id.* at 210.

¹⁰⁹ EPA, Amendments to the Water Quality Standards Regulation to Establish the Numeric Criteria for Priority Toxic Pollutants Necessary to Bring All States into Compliance with Section 303(c)(2)(B), 56 Fed. Reg. 58,420 (Nov. 19, 1991) (06471-6529).

¹¹⁰ *Id.* at 58,434.

¹¹¹ *Id.* at 58,435.

¹¹² *Id.*

EPA 304(a) Guidance also illustrates why protecting the highest subpopulation exposure at 10^{-6} would be over-protective of designated uses:

It is important to understand that criteria for carcinogens are based on chosen risk levels that inherently reflect, in part, the exposure parameters used to derive those values. Therefore, changing the exposure parameters also changes the risk. Specifically, the incremental cancer risk levels are *relative*, meaning that any given criterion associated with a particular cancer risk level is also associated with specific exposure parameter assumptions (e.g., intake rates, body weights). When these exposure parameter values change, so does the relative risk. For a criterion derived on the basis of a cancer risk level of 10^{-6} , individuals consuming up to 10 times the assumed fish intake rate would not exceed a 10^{-5} risk level. Similarly, individuals consuming up to 100 times the assumed rate would not exceed a 10^{-4} risk level. Thus, for a criterion based on EPA's default fish intake rate (17.5 gm/day) and a risk level of 10^{-6} , those consuming a pound per day (i.e., 454 grams/day) would potentially experience between a 10^{-5} and a 10^{-4} risk level (closer to a 10^{-5} risk level). (Note: Fish consumers of up to 1,750 gm/day would not exceed the 10^{-4} risk level.) If a criterion were based on high-end intake rates and the relative risk of 10^{-6} , then an average fish consumer would be protected at a cancer risk level of approximately 10^{-8} . The point is that the risks for different population groups are not the same.¹¹³

EPA's 2000 Human Health Methodology clearly describes an "accepted risk range" of 10^{-4} to 10^{-6} , and provides that states may adopt a cancer risk level of either 10^{-5} or 10^{-6} for the general population, as long as "the risk to more highly exposed subgroups (sport fishers or subsistence fishers) does not exceed the 10^{-4} level."¹¹⁴ Remarkably, EPA's only reference in the proposed rule to this long held policy and practice of addressing the unique health risks to Indian tribes as a high consuming subpopulation is found in a footnote. 80 Fed. Reg. at 55065 n. 6. Rather than acknowledging that its proposed rule is a radical departure from the 2000 Guidance, EPA simply states that the 2000 Human Health Methodology "did not consider how CWA decisions should account for applicable reserved fishing rights, including treaty-reserved rights." *Id.* at 55068 (§IV.C.b). But as previously discussed, that is simply not the case.

The EPA Final Rule additionally fails to acknowledge that the federal government has repeatedly deemed a 10^{-4} risk level to result in a *de minimis* risk when applied to more exposed subpopulations in deriving human health criteria under the CWA. EPA likewise failed to acknowledge that across EPA and FDA programs exposures at the level of risk between 10^{-6} and 10^{-4} are deemed acceptable because they represent an insignificant and essentially zero increased risk of cancer.¹¹⁵

¹¹³ See n.3, EPA, 2000 Human Health Methodology at 2-7 (00113).

¹¹⁴ *Id.* at 1-12.

¹¹⁵ See Attachment A, at 12.

“*De minimis*” is a term of art taken from the principle in common law of *de minimis non curat lex* meaning roughly that the “the law does not concern itself about trifles.”¹¹⁶ EPA appears to be reversing decades of scientific research and sound public policy by implying that highly exposed populations will not be as well protected if their exposure risk is at a risk level of 10^{-4} . On the contrary, it has been well understood prior to today that “if only a small population would be at greatest risk, the expected number of excess cancers corresponding to individual risks at the *de minimis* level of 10^{-4} would still be zero.”¹¹⁷ In actual practice, federal agencies across at least 132 regulatory decisions concluded that for small populations the *de minimis* lifetime risk was considered to be 10^{-4} .¹¹⁸ These regulatory decisions include actions by the Consumer Product Safety Commission, the Food and Drug Administration, the Occupational Safety and Health Administration and EPA programs for water quality, air, pesticide use, drinking water, toxic substances and radiation.¹¹⁹ A survey of these decisions concluded that “for small-population effects, regulatory action was never taken for individual risk levels below 10^{-4} .”¹²⁰

The national policy on acceptable risk is based on an extended scientific evaluation and has withstood legal challenges.¹²¹ The risk policy for human health water quality criteria was resolved in the NTR. The NTR and subsequent EPA guidance documents have consistently articulated a policy to accept human health water quality criteria protecting the general population at a risk level of 10^{-6} or 10^{-5} as long as higher exposed populations are protected to at least a level of 10^{-4} .¹²² EPA left it to each state to make its own risk management decision: “Adoption of a 10^{-6} or 10^{-5} risk level, both of which States and authorized Tribes have chosen in adopting water quality standards to date, represents a generally acceptable risk management decision, and EPA intends to continue providing this flexibility to States and Tribes.”¹²³

A long line of EPA decisions affirm the existing risk policy in human health criteria approvals for states on the Great Lakes¹²⁴, the California Toxic Rule, 40 C.F.R. § 131.38, and the state of Oregon human health criteria. The 2011 Technical Support Document for the Oregon criteria unequivocally states:

¹¹⁶ BLACK’S LAW Dictionary 524 (2009).

¹¹⁷ Attachment B, at 18 (*quoting* D. Kocher, Criteria for Establishing *de minimis* Level of Radionuclides and Hazardous Chemicals in the Environment (1996) (Report ES/ER/TM-187 prepared by the Oak Ridge National Laboratory for the U.S. Department of Energy).

¹¹⁸ *See* Attachment B, at 18.

¹¹⁹ Travis, Richter, Crouch, Wilson and Klema, Cancer Risk Management, 21 ENVIRON. SCI. TECHNOLOGY 415, Table 1 (1987).(05083-5088).

¹²⁰ *Id.* at 418.(05086).

¹²¹ *See* Attachment A at 11-12.

¹²² *See* n.1, NTR at 60855; *see also* n. 42, EPA, 2000 Human Health Methodology at 1-12 (October 2000)(00104).

¹²³ *See* n.3, EPA, 2000 Human Health Methodology at 2-6 (00112); *see also* Attachment A at 13-14.

¹²⁴ EPA, Final Water Quality Guidelines for the Great Lakes System, 60 Fed. Reg. 15366-01 (March 23, 1995) (01775-1907)

EPA has identified a risk level range of 1×10^{-6} (1:1,000,000) to 1×10^{-5} (1:100,000) to be an acceptable risk management goal for the general population....

EPA's 2000 Methodology states that criteria based on a 10^{-5} risk level are acceptable for the general population as long as States and authorized Tribes ensure that the risk to more highly exposed subgroups (sport fishers or subsistence fishers) does not exceed the 10^{-4} risk policy.¹²⁵

Under the EPA risk policy, compared to the current state risk policy, the general population consumption rate results in criteria that will be protective to a level more stringent than 10^{-7} . The 100th percentile of tribal consumption will be protected to 10^{-5} . Ecology concluded that the mean consumption rate for the general population in Washington is 18.8 g/day including all fish.¹²⁶ The effective rate for deriving human health water quality criteria is substantially less than this value, as it includes both fish that are store bought and anadromous fish that do not spend sufficient time in Washington waters to bio accumulate toxics. As such, EPA would effectively require that water quality standards applicable to Washington protect the general population at a risk level of 10^{-8} , and median tribal consumption rates at a risk level of 10^{-6} .

Criteria based on existing EPA 304(a) Guidance would be fully protective of tribal consumption without this dramatic change in risk policy. If EPA used 17.5 g/day as the consumption rate for the general population in Washington, at a risk level of 10^{-6} , the resulting criteria would be protective to a consumption rate of 175 g/day at a 10^{-5} risk level and for a consumption rate of 1,750 g/day at a risk of 10^{-4} . The Washington Office of Financial Management estimates that there are 104,000 American Indian and Alaska natives in Washington.¹²⁷ If EPA followed established guidance and science and applied a 10^{-6} risk level to the general population the resulting exposures at risk levels of 10^{-5} and 10^{-4} would not predict a single excess cancer risk for this population—a result that is more stringent than EPA guidance which calls for no excess cancer risk at the median consumption rate for high consuming populations at 10^{-4} .

ARCADIS, Summary of Health Risk Assessment Decisions in Environmental Regulations (March 6, 2015), Attachment A, explains in detail why tribal consumers would have the equivalent of a zero-increased risk of cancer if EPA complied with its own guidance in setting criteria based on the general population consumption rate. The risk of cancer from all causes far outweighs the possible risk of cancer from exposure to chemicals in the environment. *Id.* at 2. To add some meaning to these risks, the excess cancer risk that may occur as a result of exposure to a carcinogen in the environment in Washington on an annual basis is 0.54% while the lifetime risk of cancer based on a risk level of 10^{-4} used to set water quality criteria is

¹²⁵ EPA, Technical Support Document for Action on the State of Oregon's New and Revised Human Health Water Quality Criteria and Associated Implementation Tools Submitted July 12 and 21, 2011, at 27 (October 17, 2011)(01908-2010).

¹²⁶ Ecology, Fish Consumption Rate Technical Support Document Version 2.0, 40-44 (January 2013)(Ecology Publication No. 12-09-058)(05398-5591).

¹²⁷ *Id.* at 18.

0.00014%. *Id.* at 8-9. A 10^{-4} risk level is clearly an acceptable and protective upper bound risk level to use in deriving water quality criteria as there is no real increase in the overall risk of incurring cancer. This is especially true when comparing an **annual** risk to a risk level based on a **lifetime** exposure every day for 70 years. In theory only, a 10^{-4} risk level would predict one excess cancer in Washington. *Id.* at 2. This is only theoretical as risk managers across EPA and other federal programs have long considered this level of risk insignificant and, in fact, the absence of any real risk. *Id.* at 9-21. It is inexplicable why EPA is proposing to ignore and in some sense misrepresent the best available science and policy in risk management.

Overestimating risks in the interest of precaution must consider the consequences of such choices. *Id.* at 5. As ARCADIS explains, there is “a cost to reducing the levels of chemicals in the environment to meet more-stringent limits, a cost that may be measured in dollars, energy usage, or the risk of injury to workers to meet lower standards.” *Id.* An estimate of those costs in terms of additional water quality treatment and energy consumption is provided in HDR, Treatment Technology Review and Assessment for Association of Washington Business, Association of Washington Cities and Washington State Association of Counties (December 2013)—Attachment C. HDR evaluated the cost of compliance with the Oregon human health water quality criteria for arsenic and PCBs at values that are the equivalent of the EPA-proposed criteria for Washington. *Id.* at 9, Table 1. The HDR report looked at advanced treatment systems using reverse osmosis and membrane filtration and estimated the range of unit costs for improving a 0.5 Million Gallon a Day (mgd) facility at \$60 to \$162 per gallon per day. *Id.* at 37. The range of unit costs for improving a 25 mgd facility to advanced treatment is \$10 to \$35 per gallon per day of treatment capacity. *Id.* For a 5 mgd facility HDR estimated the incremental cost of advanced treatment in total net percent value (as of 2013) at between \$75 to \$160 million. *Id.* at 38, Table 9.

If these costs are applied to just the 73 major NPDES facilities identified by EPA in its economic impact analysis, the total net present value (as of 2013) would be in the range of \$5.5 billion and \$11.7 billion. This does not include the 333 minor permits identified by EPA or the thousands of facilities and additional municipalities that are subject to NPDES stormwater permits. HDR also points to substantial collateral impacts above the cost of construction and operation of advance treatment including higher energy consumption, increased greenhouse gas emissions and increased solids production. *Id.* at ES-2.

EPA has failed to provide any meaningful basis for a risk policy that would be the equivalent of 10^{-8} to 10^{-6} . The best the agency can muster after several years of refusing to engage publicly on this issue is the frustrating *non sequitur* that some tribes have treaty rights to fish, and therefore have a right to safe and healthy fisheries, and therefore the tribal consumption rates must be protected to a risk level of 10^{-6} . The logical fallacy in this rationale is in substance no more revealing than the position advanced by EPA over the past four years which is in effect that “we want it this way because we want it this way.”

EPA has simply failed to provide a rationale for changing accepted risk management policies. Any obligation of the United States under tribal treaties is the same obligation EPA has to all residents in the state of Washington—the obligation to establish criteria that are protective of beneficial uses including the beneficial uses attributed to high fish consuming populations, which encompass tribal consumers.

Before today EPA has never wavered on the risk management guidance that evolved prior to and since the adoption of the NTR in 1992. In June 2015 EPA published final updated ambient water quality criteria for the protection of public health in accordance with section 304(a)(1) of the Clean Water Act.¹²⁸ The risk-based criteria were updated based on the application of a 10^{-6} risk level to a general population consumption rate. EPA did not suggest that its risk management decision placed high consuming populations at risk and certainly did not consider whether there was any scientific basis for protecting those populations at a risk of 10^{-6} . The criteria are in fact based on the same understanding of the range of acceptable risk levels used in developing the NTR and the 2000 Human Health Methodology.¹²⁹ EPA proclaimed, based on this approach, that its recommended criteria “are scientifically derived numeric values that EPA determines will generally protect aquatic life or human health from adverse effects of pollutants in ambient water.”¹³⁰

There is no basis for the rule’s departure from EPA’s consistent approach that high consuming populations are adequately protected at a risk level of 10^{-4} . And by adequately protected, EPA has meant that the exposures at the levels recommended under national guidance afford an insignificant and essentially zero additional risk of cancer. EPA has no basis for differentiating its obligations to an entire population including subpopulations of more highly exposed members based on the existence of tribal treaty rights. EPA and reviewing courts have consistently said that high consuming populations are protected within the existing framework for risk. EPA has offered no scientific (or legal) basis for the assertion that tribal fish consumers in Washington are uniquely at risk and require some additional level of protection.

I. THE EPA FINAL RULE IS NOT CONSISTENT WITH THE EPA ENVIRONMENTAL JUSTICE GUIDANCE

The EPA final rule is inconsistent with the EPA guidance on environmental justice EPA guidance on environmental justice, including consideration of tribal consumption rates, in fact supports the human health criteria submitted by Washington to EPA.

In May 2015 EPA published formal guidance on considering environmental justice in agency actions, including rulemaking.¹³¹ The guidance document does not reference and therefore implicitly endorses EPA’s long-standing policy on the acceptable range of risk levels. The following discussion from the guidance document exemplifies how the agency will determine whether there is a disproportionate impact from an agency action:

It is important to note that the role of the analyst is to assess and present differences in anticipated impacts across population groups of concern to the

¹²⁸ EPA, Final Updated Ambient Water Quality Criteria for the Protection of Public Health, 80 Fed. Reg. 36986 (June 29, 2015)(04807-4810).

¹²⁹ EPA, Human Health Ambient Water Quality Criteria: Draft 2014 Update, EPA-820-F-14-003 at 2 (May 2014)(01772-1774).

¹³⁰ See n.83. EPA, Final Updated Ambient Water Quality Criteria at 36987.

¹³¹ EPA, Guidance on Considering Environmental Justice During the Development of Regulatory Actions (May 2015)(available at <http://www3.epa.gov/environmentaljustice/resources/policy>) (05991-6046).

decision-maker and the public. The determination of whether there is a potential disproportionate impact that may merit Agency action is ultimately a policy judgment informed by analysis, and is the responsibility of the decision-maker. These analyses will depend on the availability of the scientific and technical data. As noted in the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013), examples of the type of information that may be useful to provide to decision-makers for considering whether or not effects are disproportionate include: the severity and nature of health consequences; the magnitude of the estimated differences in impacts between population groups; **mean or median exposures or risks to relevant population groups**; distributions of exposures or risk to relevant population groups; characterization of the uncertainty; and a discussion of factors that may make population groups more vulnerable.¹³²

Thus, the EPA 2015 environmental justice guidance focuses on the mean or median consumption or exposure rate of a more highly exposed subpopulation in the same manner as the 2000 EPA guidance focuses on the range of acceptable risk levels.

EPA has consistently defended this range as protective of the entire population under the principles of environmental justice. This was addressed in the response to comments for the 1995 Final Water Quality Guidelines for the Great Lakes System where EPA approved the use of a one in one hundred thousand risk level:

Commentators argued that a 15 gram per day assumption in the methodology would not adequately protect populations that consume greater than this amount (e.g. low-income minority anglers and Native Americans). And that such an approach therefore would be inconsistent with Executive Order 12898 regarding environmental justice (February 16, 1994, 59 Fed. Reg. 7629). **EPA believes that the human health criteria methodology, including the fish consumption rate, will provide adequate health protection for the public, including more highly exposed sub-populations.** In carrying out our regulatory actions under a variety of statutory authorities, including the CWA, EPA has generally viewed an upper bound incremental cancer risk in the range of 10^{-4} to 10^{-6} as adequately protective of public health. As discussed above, the human health criteria methodology is based on a risk level of 10^{-5} . Therefore, if fish are contaminated at the level permitted by the criteria derived under the final Guidance, individuals eating up to 10 times (i.e., 150 grams per day) the assumed fish consumption rate would still be protected to 10^{-4} risk level.¹³³

In promulgating the California Toxics Rule in 2000 EPA specifically rejected several comments that the 10^{-6} to 10^{-4} risk policy offended notions of environmental justice.

¹³² *Id.* at 6-7 (emphasis added) (06002-6003).

¹³³ *See* n.124, EPA, Final Water Quality Guidelines for the Great Lakes System at 15 (emphasis added)(01789).

EPA believes that this rule is consistent with the terms of the Executive Order (E.O.) on Environmental Justice. EPA rejects the notion that the rule is, in any respect, discriminatory against persons or populations because of their race, color, or national origin. The final rule establishes criteria that are designed to ensure protection of the public, including highly exposed populations. While some groups and individuals, including some low income and minority persons and populations, may face a greater risk of adverse health effects than the general population due to their particular fish consumption patterns, EPA believes that these groups will nonetheless receive a level of public health protection within the range that EPA has long considered to be appropriate in its environmental programs (e.g., 10^{-4} to 10^{-6} incremental cancer risk). **Obviously, as long as there is variability in fish consumption patterns among various segments of the population, it would be impossible for EPA to ensure that all groups would face identical risk from consuming fish. Therefore, EPA has sought to ensure that, after attainment of water quality criteria in ambient waters, no group is subject to increased cancer risks greater than the risk range that the EPA has long considered protective.** EPA disagrees that individuals who consume up to a pound of fish per day would face a 10^{-3} cancer risk. Given that the basis of the criteria are a 6.5 gm/day assumption at a 10^{-6} risk level, individuals who consume a pound of fish per day would be protected within the established acceptable range of 10^{-4} to 10^{-6} , consistent throughout current EPA program office guidance and regulatory actions.¹³⁴

There is no question that the 2015 guidance on environmental justice fully reflects the consideration of tribal consumption rates and concerns about the EPA trust and treaty obligations. EPA failed to explain how it is possible for its 304(a) Guidance on risk levels to be consistent with environmental justice but not consistent with a newly invented interpretation of tribal treaty rights.

J. EPA Used a Fish Consumption Rate that is Not Supported by Available Technical Information

The 175 g/day FCR used by EPA is not supported by technical information and is not necessary to protect the residents of Washington. It is also inconsistent with past EPA guidance and conflicts with the Washington risk policy to protect the average consumption rate of the general population, including consumers and non-consumers, to a risk level of 10^{-6} .

EPA is required under the EPA-approved state risk policy to use a fish consumption rate that is less than 19 g/day. Ecology documented 18.8 g/day as the average consumption rate for consumers only for the general population in Washington.¹³⁵ Ecology has not provided a consumption rate that reflects both consumers and non-consumers but it must be substantially

¹³⁴ EPA, California Toxics Rule Response to Comments Report, CTR-002-005a (Dec. 1999) (emphasis added)(02311-3812).

¹³⁵ See n.81. Ecology, Fish Consumption Rate Technical Support Document Version 2.0 at 95 (05514).

lower than 18.8 g/day given that Ecology estimated that between 25% and 70% of the general population in the state of Washington do not eat fish.¹³⁶

The FCR used by EPA in the rule exceeds that used by any state to derive human health criteria, with the exception of the Oregon human health criteria adopted in 2012.¹³⁷ EPA guidance recommends for exposure to carcinogens that states use an FCR that protects the 90th percentile consumption of the general population while ensuring that subsistence fishers are protected at their average intake rate. EPA guidance recommends a default fish intake rate of 17.5 grams a day to protect the general population.¹³⁸ The same guidance recommends that state criteria use an average intake rate of 142.4 grams a day for subsistence fishers. “EPA believes that the assumption of 142.4 grams/day is within the average consumption estimates for subsistence fishers based on studies reviewed.”¹³⁹

The rationale for this guidance is to ensure that human health criteria are protective within a broad range of consumption rates in a state from the general population at the 90th to the 99th percentile rates of consumption. EPA guidance describes the use of the general population consumption of 17.5 grams a day at the 90th percentile as a baseline to ensure protection of the 99th percentile of the general population and average consumption rate for more exposed populations including subsistence fishers.¹⁴⁰ EPA confirmed this policy in a conference call with state regulators on April 17, 2013. EPA was asked during that conference call how EPA defines high exposure or high risk population for determining fish consumption rates. Beth Doyle, on behalf of EPA, responded that “EPA used the 99th percentile of the general population, as representing what they figured approximated the median consumption rate for subsistence fishers.”¹⁴¹ The fish consumption rate of 175 grams a day used by Ecology is ten times the 90th percentile consumption rate established by EPA guidance for the general population. EPA should acknowledge that 175 g/day is based on the 50th to 90th percentiles of tribal consumption rates. Oregon developed the 175 grams a day FCR for its criteria using the same consumption studies relied on by EPA in the final rule and concluded that the value reflects the 95th percentile consumption rate in the Columbia River Inter-Tribal Fish Commission study and the 90th percentile consumption rates documented for Puget Sound Tribes.

Consequently, the recommended rate [175 g/day] reflects consumption of salmon, and lamprey relative to rates documented in the CRITFC study (to protect at least 95% of fish consumers in Oregon), as well as marine fish and shellfish relative to

¹³⁶ See n.5. Ecology, Fish Consumption Rate Technical Support Document Version 2.0.

¹³⁷ Ecology, Fish Consumption Rates & Risk Levels for Carcinogens Used in Human Health Criteria Calculations, (November 5, 2013)(00259-00267).

¹³⁸ See n.5. Ecology, Overview at 15 (00021).

¹³⁹ See n.3. EPA, 2000 Human Health Methodology at 4-27 (00186).

¹⁴⁰ See n.1064. EPA, Fish Consumption And Environmental Justice at 28. (“EPA’s default value of 142.4 grams/day for subsistence fishers reflects the 99th percentile value of 142.41 grams/day for freshwater and estuarine ingestion by adults.”)(00311).

¹⁴¹ D. Essig, Email to S. Kirsch (April 5, 2013)(00453-454).

the rates documented in the Puget Sound studies (to protect at least 90% of fish consumers in Oregon).¹⁴²

The following table from an Ecology technical support document developed for the state rulemaking summarizes the consumption rates from Tribal studies. The 175 grams per day FCR used by EPA exceeds the median (50th percentile) for all Tribes and the 90th percentile for all Tribes with the exception of the Tulalips, 206 g/day, and the Suquamish, 489 g/day. The Suquamish consumption rate shown in this table is heavily influenced by high consumption rates reported by a few individuals. In other studies, such as the Tulalip study, similar high rates were excluded from the analysis as “outliers.”¹⁴³ Oregon DEQ recognized that “[w]ith no adjustments made for the high consumption rates, it was noted that the reported means may be highly influenced by the consumption of just a few individuals.”¹⁴⁴

Table 37. Summary of Fish Consumption Rates, All Finfish and Shellfish

Population	Source of Fish	Number of Adults Surveyed	Mean	Percentiles		
				50 th	90 th	95 th
General population (consumers only)	All sources: EPA method	2,853	56	38	128	168
	All sources: NCI method	6,465	19	13	43	57
Columbia River Tribes	All sources	464	63	41	130	194
	Columbia River	—	56	36	114	171
Tulalip Tribes	All sources	73	82	45	193	268
	Puget Sound	71	60	30	139	237
Squaxin Island Tribe	All sources	117	84	45	206	280
	Puget Sound	—	56	30	139	189
Suquamish Tribe	All sources	92	214	132	489	797
	Puget Sound	91	165	58	397	767

See Polissar et al., 2012, Table E-1.

The percentiles for tribal consumption rates in this table are overstated. Ecology commissioned a report from the consultants who conducted the Tulalip, Squaxin and Suquamish studies. In a report dated October 3, 2013, the data was analyzed for a hypothetical combination of the Puget Sound Tribes.¹⁴⁵ This analysis calculated the median Tribal consumption rate to be 127.2 g/day for all fish.¹⁴⁶

¹⁴² Oregon DEQ, Oregon Human Health Criteria Issue Paper Toxics Rulemaking at 9 (May 24, 2011)(00476-0559).

¹⁴³ Oregon DEQ, Human Health Focus Group Report Oregon Fish and Shellfish Consumption Rate Project at 10-12 (June 2008)(00560-631).

¹⁴⁴ *Id.* at 12 (00631).

¹⁴⁵ Polissar and Hippe, Fish Consumption Rates for a Hypothetical Combination of Puget Sound Tribes (October 31, 2013)(00632-657).

¹⁴⁶ *Id.*, Table A at 2.

ARCADIS also developed a composite distribution of Washington Tribal consumption rates based on the TSD data.¹⁴⁷ That distribution calculates the median 90th and 95th percentiles for Tribal consumption rates to be 55.05, 137.77 and 178.69 grams per day.¹⁴⁸

The Clean Water Act and EPA regulations require human health water quality criteria to protect exposures that may result from pollutants in state waters. EPA guidance accordingly does not require human health criteria to regulate pollutant levels in marine fish that do not accumulate pollutants in waters of the United States within the jurisdiction of a state. The default value of 17.5 grams a day in EPA guidance thus reflects freshwater/estuarine fish and shellfish only.¹⁴⁹ The range of consumption rates in the 2000 EPA guidance similarly do not include marine fish.¹⁵⁰

Salmon, as a marine species, should accordingly be excluded from the consumption rate used to derive Washington's criteria. The data on fish tissue samples from salmon in Puget Sound indicates that the predominant fraction of PCBs detected is accumulated while the fish are in the ocean-phase of their life cycle.¹⁵¹ Including all salmon in the FCR is not likely to benefit public health for contaminants that are accumulated in marine waters beyond the jurisdiction of the state.¹⁵² Even for the small percentage of salmon that are resident for longer periods of time more stringent water quality standards are not likely to result in significant reductions in the body burden of contaminants.¹⁵³

Excluding salmon from the fish consumption rate lowers the median consumption rate documented for Puget Sound Tribes to 80.4 g/day—less than half of the FCR used by EPA for the proposed criteria.¹⁵⁴ The ARCADIS analysis independently calculated the “non-salmon” median consumption rate for Washington Tribes at 29.73 g/day.¹⁵⁵ Even if consumption rates are

¹⁴⁷ ARCADIS, Derivation of Alternative Human Health Risk-Based Ambient Water Quality Criteria Using Probabilistic Methods for the State of Washington, Attachment A at 7 (February 4, 2014)(00658-0723).

¹⁴⁸ *Id.*

¹⁴⁹ See n.3. EPA, 2000 Human Health Methodology at 4-25 (EPA default fish consumption rates represent the ingestion of “freshwater and estuarine fish”)(00184).

¹⁵⁰ *Id.* at 4-25; see also Ecology, Decision Factors in Development of Human Health Criteria (November 6, 2013)(“Current federal guidelines do not use salmon in the fish consumption rate because most do not reside for their full life in water regulated by the Clean Water Act”)(00726-727).

¹⁵¹ See National Council for Air and Stream Improvement (NCASI), Comments on Publication No. 11-09-050, Fish Consumption Rates Technical Support Document, Appendix A, page 11 (January 11, 2012) (00728-0740), see also NCASI, Comments on Proposed Human Health Criteria and Implementation Tools Rule Proposal, Attachment A at 2 (March 4, 2015) (00741-0767).

¹⁵² *Id.*

¹⁵³ Hope, Acquisition of Polychlorinated Biphenyls (PCBs) by Pacific Chinook Salmon: An Exploration of Various Exposure Scenarios, 8 INTEGRATED ENVIRONMENTAL ASSESSMENT AND MANAGEMENT 553, 561 (January 2012)(05073-5082).

¹⁵⁴ See n.145. Polissar and Hippe, Fish Consumption Rates for a Hypothetical Combination of Puget Sound Tribes at 2 (00633).

¹⁵⁵ ARCADIS, Derivation of Alternative Human Health Risk-Based Ambient Water Quality Criteria Using Probabilistic Methods for the State of Washington, Attachment A at 7 (00698).

apportioned for that portion of the salmon that are found to accumulate pollutants and are resident in Puget Sound for a longer period in their life cycle, the median tribal consumption rate for all seafood and the portion of anadromous fish intake was estimated by Ecology consultants to be 108 grams per day.¹⁵⁶ The ARCADIS analysis calculated a Washington tribal consumption rate with apportioned salmon at a median rate of consumption to be 37.78 g/day and of 122.63 g/day at the 95th percentile.¹⁵⁷

EPA improperly bases its criteria on what are alleged to be “suppressed” fish consumption rates for northwest tribal members. 80 Fed. Reg. 55,068. It is impossible to comment on this basis for the rule as EPA does not cite to a single study, document or statistic of any kind to support its contention other than “consultation with Washington tribes and Columbia River basin tribes.” *Id.* Reliance on meetings that are closed to the public and on propositions for which there is no documentation or scientific analysis is a facial violation of CWA and APA requirements to provide a scientific basis for proposed standards and an opportunity for public participation.

The only regulatory authority cited in this section of the Federal Register notice for the draft rule is a cross-reference to section II.B.c in the same notice that includes a representation that EPA “generally” recommends “selecting a FCR that reflects consumption that is not suppressed by fish availability or concerns about the safety of available fish.” 80 Fed. Reg. 55,065. The sole authority for this proposition is a “Frequently Asked Questions” document that EPA posted online in January 2013. *See* 80 Fed. Reg. 55,065, n. 15. EPA has conceded that this posting was done improperly and previously assured state regulators that the document would be withdrawn.¹⁵⁸ EPA has also conceded that it is not sure how suppression should be factored into criteria.¹⁵⁹

It is difficult to fathom how EPA “generally” recommends consideration for suppressed consumption rates when until December 2016 there was no guidance on how EPA and the states are supposed to factor this into developing water quality criteria.¹⁶⁰ EPA has long advised states to use data to develop criteria (with a preference for local or regional data over national data).¹⁶¹ EPA is now asserting that it is permissible for it to consider unknown impacts on consumption rates for which there is no data.

EPA does not reference any evidence to support its contention that fish consumption in Washington is suppressed due to “concerns about the safety of available fish.” There is likewise a lack of any information in the rule docket posted by EPA to support such a contention. EPA

¹⁵⁶ *See* n.145. Polissar and Hippe, Fish Consumption Rates for a Hypothetical Combination of Puget Sound Tribes at 2 (00633).

¹⁵⁷ *See* n.155.

¹⁵⁸ S. Braley, Email to M. McCoy, C. Niemi and D. Essig (January 9, 2014); S. Braley, Email to D. Essig and C. Niemi (July 28, 2014)(06692-6693).

¹⁵⁹ D. Essig, Email to B. Burnell (September 30, 2014)(06691).

¹⁶⁰ *See* n.64. EPA, Comment on Ecology Draft Rule.

¹⁶¹ *See* n.3. EPA, 2000 Human Health Methodology at 2-2 (00108).

should acknowledge the results of a recent fish consumption survey in Idaho on this issue that found only 3% of the population indicated that they limited fish consumption due to health concerns about pollution or contamination.¹⁶²

It is also inappropriate to employ an alleged lack of availability of fish as a factor in setting human health criteria. Human health criteria do not impact fish availability. Imposing repressive human health criteria on the state of Washington will in no way enhance fish runs or increase the availability of fish.

Even if it was appropriate to factor availability of fish in consideration of consumption rates, EPA has failed to cite to any evidence that there is a lack of availability of fish that would drive suppression. There is no documentation for example that tribal members lack access to fish. On the contrary, the tribal consumption studies document that at most two individual tribal members eat as much as 1600 g/day of fish.¹⁶³ This is nearly twice the historic rate of consumption used in deriving the Spokane Tribe of Indians human health criteria.¹⁶⁴

It appears, moreover, that tribal consumption fish rates have been growing and are not suppressed. In 1992, the Columbia River basin tribes claimed a fish consumption rate of 150 g/day.¹⁶⁵ By 2012, the Columbia River Inter-Tribal Fish Commission was claiming that the 95th percentile of tribal members were consuming 175 g/day.¹⁶⁶ In 2015 the Northwest Indian Fisheries Commission Columbia River Inter-Tribal Commission claimed that there are contemporary consumption rates of between 500 and 918 g/day.

EPA itself has increased the FCR from 6.5 g/day in the NTR to 22 g/day in criteria included in the 2015 update to the Section 304 human health criteria. This trend is consistent with national data showing an increase in consumption of fish over time. The U.S. Department of Agriculture has reported that the per capita consumption of fish grew from 12.4 pounds to nearly 16 pounds from 1980 to 2009.¹⁶⁷ This indicates that consumption rates used in setting criteria are

¹⁶² Idaho Department of Environmental Quality, Considerations in Deciding Which Fish to Include in Idaho's Fish Consumption Rate: Policy Summary at 7. (August 2015)(04792-4802).

¹⁶³ See n.64. EPA, Comment on Ecology Draft Rule; see also n.104. Polissar and Hippe, Fish Consumption Rates for a Hypothetical Combination of Puget Sound Tribes.

¹⁶⁴ EPA, Letter approving Spokane Tribe of Indians Water Quality Standards, *Technical Support Document* dated December 11, 2013 at 22 (December 9, 2013) (the criteria are based on a FCR of 865 g/day) (01020-1071).

¹⁶⁵ *Dioxin/Organochlorine Ctr. v. Clarke*, 57 F.3d 1517, 1524 (9th Cir. 1995)(“In addition, the EPA argues that even assuming consumption of 150 grams of fully contaminated fish, as claimed by DOC, the risk level would still be only 23 in a million.”).

¹⁶⁶ EPA, Technical Support Document for Action on the State of Oregon's New and Revised Human Health Water Quality Criteria and Associated Implementation Tools Submitted July 12 and 21, 2011 at 27 (October 17, 2011)(01908-2010).

¹⁶⁷ U.S. Census Bureau, Statistical Abstract of the United States: 2012, Sec. 3, Table 217 (August 2011)(06986).

adjusting with increasing consumption rates. This is illustrated in the following figure from the Idaho negotiated rulemaking process:¹⁶⁸

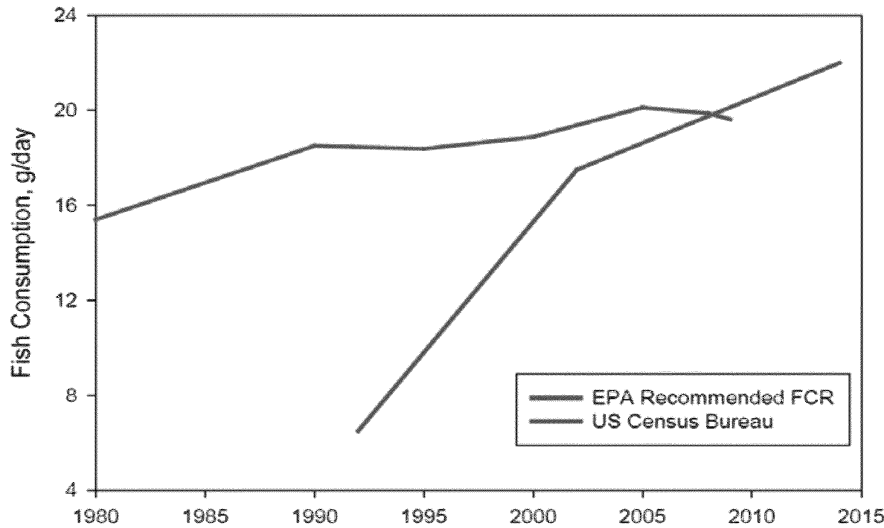


Figure 4. Per capita consumption of fish in the United States and EPA-recommended fish consumption rate (FCR), 1980–2014.

It is not appropriate to speculate on future consumption rates or restoration of consumption rates based on historic information. If fish consumption rates increase over time that information should inform future reviews by EPA of any criteria it makes applicable to the state of Washington.

K. Compliance with Downstream Water Quality Standards is not a Basis for the Proposed Rule

EPA has improperly relied on the need to protect downstream water quality standards as a basis for its demands that the state of Washington use a high tribal consumption rate and 10^{-6} risk policy. This was declared by Mr. McLerran in his meeting with Mr. Opalski and the regulated community in April 2013.¹⁶⁹ It was echoed by EPA staff at meetings with state officials.¹⁷⁰ It was repeated in a July 1, 2014 letter from Mr. McLerran wherein he states he “supports regional consistency among Region 10 states” to protect downstream waters under 40 C.F.R. § 131.10(b).¹⁷¹ EPA repeats these post-hoc rationalizations in the Federal Register notice.

¹⁶⁸ See n.162. Idaho Department of Environmental Quality, Considerations in Deciding Which Fish to Include in Idaho’s Fish Consumption Rate: Policy Summary at 7.

¹⁶⁹ D. McLerran, Pers. Communication (April 9, 2013).

¹⁷⁰ See n.63. C. Niemi, Handwritten Notes and A. Chung, Pers. Communication, NWPPA Annual Meeting (June 6, 2013).

¹⁷¹ See n.62. D. McLerran, Letter.

80 Fed. Reg. at 55068 (“Use of [175 g/day] should thus help provide for the attainment of and maintenance of downstream WQS in Oregon.”)

EPA regulations, 40 C.F.R. § 131.10(b), do not require upstream states to adopt the same water quality standards as downstream states. EPA issued a Frequently Asked Questions document in June 2014 that allows the state to comply with this provision in EPA regulations by adopting a narrative provision in its water quality standards that discharges from the state will not cause or contribute to a violation of applicable downstream state water quality standards.¹⁷² The EPA-approved water quality standards for Washington satisfy the requirements of 40 C.F.R. § 131.10(b) by expressly providing that all “Upstream actions must be conducted in manners that meet downstream water quality criteria.” WAC 173-201A-260(3)(b).

Ecology considered and applied the Oregon human health criteria in NPDES permits recently issued on the Columbia River.¹⁷³ As of today, these are the only NPDES permits on the Columbia River, both issued by Ecology, that have actually applied the Oregon human health water quality criteria. To our knowledge, Oregon has yet to address its human health criteria in a NPDES permit decision. Ecology has also applied its regulation to protect downstream water quality standards in the Total Maximum Daily Load plan for dissolved oxygen on the Spokane River.¹⁷⁴ Ecology has made the same consideration of the downstream Spokane Tribe of Indians criteria in developing a PCB TMDL on the Spokane River.¹⁷⁵ The actions of Ecology, consistent with the state water quality standards, demonstrate that there is no basis for EPA’s demand that the same toxic criteria apply in both Oregon and Washington.

EPA and federal courts have recognized that upstream states are not required to have the same water quality standards as downstream states. EPA, for example, denied a petition for rulemaking by the Ozark Chapter of the Sierra Club to establish the same criteria for states on the Mississippi and Missouri Rivers.¹⁷⁶ EPA made clear that upstream states are not required to adopt criteria that are the same as downstream states:

The federal regulations state, “In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality

¹⁷² EPA, Protection of Downstream Waters in Water Quality Standards: Frequently Asked Questions, EPA-820-F-14-001, at 6 (June 2014) (“Adoption of narrative criteria or numeric criteria (or both) that are protective of downstream waters are viable options under 40 C.F.R. 131.10(b).”)(03954-3965).

¹⁷³ Ecology, Draft Response to Downstream Waters Comments (July 2015)(addressing a NPDES permit issued in Longview)(04949-4954); *see* Ecology, Fact Sheet for NPDES Permit WA0000124 Weyerhaeuser Longview, at 60 (06987-7133); Ecology, Fact Sheet for NPDES Permit WA0000256 Georgia Pacific Consumer Products (Camas), LLC, pp. 35 and 60, Table 25 (March 10, 2015)(07134-7229).

¹⁷⁴ *See* n.172. EPA, Protection of Downstream Waters FAQ.

¹⁷⁵ Ecology, Spokane River PCB Source Assessment 2003-2007 (April 2011)(Ecology Pub. No. 11-03-013)(06808-6963).

¹⁷⁶ EPA, Decision on Petition to Publish Water Quality Standards for the Mississippi and Missouri Rivers within Arkansas, Illinois, Iowa, Kansas, Kentucky, Missouri, Nebraska and Tennessee (June 25, 2004)(available at <http://www2.epa.gov/sites/production/files/2015-02/documents/sierra-club-petition-response.pdf>)(06754-6807).

standards of downstream waters.” 40 C.F.R. §131.10(b). **The regulations do not compel states to adopt the same criteria and uses, nor do they suggest that this is the only way a state can meet these requirements. The water quality program is structured to provide states with flexibility to determine the best way to meet their obligations under § 131.10(b).**

(Emphasis added.)¹⁷⁷

In the response to the Mississippi and Missouri River petition EPA pointed out that there is no violation of 40 C.F.R. §131.10(b) simply because upstream states rely on different risk management decisions:

As discussed in the “Statutory and Regulatory Background” section, EPA publishes section 304(a) criteria based on a 10^{-6} risk level for carcinogens; states may select a specific risk level based on their own risk management decisions. EPA believes that adoption of criteria within a risk level of 10^{-6} (one in a million incremental risk for cancer) or 10^{-5} (one in one hundred thousand incremental risk for cancer) represents an acceptable range of risk management discretion for states and tribes. Within the petition states, each state adopts criteria to protect human health based on risk management decisions. Iowa, Arkansas, Tennessee, and Nebraska have adopted PCB criteria based on a 10^{-5} risk level; Illinois, Kentucky and Missouri have adopted PCB criteria based on a 10^{-6} risk level; and Kansas chose to adopt a PCB criterion to protect human health at a 10^{-7} risk level.¹⁷⁸

EPA Region 10 has advised Washington and Idaho to consider EPA decisions on other state water quality standards in the state risk management decisions.¹⁷⁹ EPA should do the same with respect to its rule. Based on the long-standing precedent, the CWA does not require the risk policy decisions in Washington to match those in Oregon. EPA is obligated to comply with the federally approved risk policy in Washington that is well within the range of risk policies that are protective of public health. “Consistency” with the Oregon criteria is not a requirement of the CWA and is not required under 40 C.F.R. §131.10(b). As such it is not a sufficient or appropriate post-hoc rationalization for EPA to compel implementation of its preferred human health criteria in Washington.

¹⁷⁷ *Id.* at 4.

¹⁷⁸ *Id.* at 18 (*citing* EPA, 2000 Methodology for Human Health Criteria). *See also* EPA, Response to Comments for Water Quality Standards; Withdrawal of Certain Federal Water Quality Criteria Applicable to California, New Jersey and Puerto Rico, EPA-HQ-OW-2012-0095, 4-5 (2012)(EPA approval of human health criteria for New Jersey that are less stringent than downstream water quality standards)(01072-1085).

¹⁷⁹ L. Macchio, Letter to D. Essig (January 20, 2015)(01086-1088).

L. The Relative Source Contribution value used by EPA is arbitrary and capricious

The Relative Source Contribution (“RSC”) is a factor in the derivation of criteria representing the portion of exposure to a contaminant that is attributable to sources regulated by the CWA.¹⁸⁰ It is arbitrary and capricious for EPA to use a RSC factor of less than 1.0 in deriving human health criteria where EPA is simultaneously using a fish consumption rate that includes all fish whether or not that fish is purchased from a store or a marine fish that does not accumulate pollutants in waters regulated by the state’s water quality standards. By using an FCR that reflects the 90th to 95th percentile of tribal consumption rates that includes all fish, there is no other source of water intake or fish consumption that should be accounted for in a RSC of less than 1.0.

EPA 2014 guidance clearly states that human health considerations in deriving water quality criteria are based on the risk only from exposure to fish and drinking water:

A complete human exposure evaluation for toxic pollutants of concern for bioaccumulation would encompass not only estimates of exposures due to fish consumption but also exposure from background concentrations and other exposure routes[.] The more important of these include recreational and occupational contact, dietary intake from other than fish, intake from air inhalation, and drinking water consumption. For section 304(a) criteria development, EPA typically considers only exposures to a pollutant that occur through the ingestion of water and contaminated fish and shellfish. This is the exposure default assumption, although the human health guidelines provide for considering other sources where data are available. **Thus the criteria are based on an assessment of risks related to the surface water exposure route only.**¹⁸¹

This guidance is the same as EPA set forth in the 2000 Human Health Methodology: “[Ambient Water Quality Criteria] for the protection of human health are designed to minimize the risk of adverse effects occurring to humans from chronic (lifetime) exposure to substances through the ingestion of drinking water and consumption of fish obtained from surface waters.”¹⁸²

EPA Region 10 has endorsed the use of an RSC of 1.0 where a state is including all salmon in its criteria development methodology. The state of Oregon applied a RSC of 1.0 in the human health criteria approved by EPA in 2012. The rationale for this risk management decision included a discussion that it is a preferred means to account for salmon consumption compared

¹⁸⁰ See n.5. Ecology, Overview at 21 (00027).

¹⁸¹ EPA, Water Quality Standards Handbook, Chapter 3, Section 3.1.3 (2014)(available at <http://www2.epa.gov/wqs-tech/water-quality-standards-handbook>)(emphasis added)(06158-6215).

¹⁸² See n.3. EPA, 2000 Human Health Methodology at 1-11 (00103). See D. Essig, Email to C. Niemi (September 6, 2012)(06685-6688).

to a lower or fractional RSC.¹⁸³ EPA Region 10 has urged Northwest states to consider EPA action on water quality standards for other states.¹⁸⁴ EPA Region 10 has further endorsed the Oregon approach as “the right outcome.”¹⁸⁵

This endorsement is also set forth in a letter dated September 5, 2014, from EPA to the state of Idaho.¹⁸⁶ EPA submitted this letter to Idaho on the question of whether the state should include or partially include salmon in its consumption rate for developing human health criteria. The letter sets forth alternatives to inclusion of salmon by reducing the RSC. EPA states that an “acceptable approach to reducing the RSC is to fully include salmon consumption in the consumption rate.”¹⁸⁷ EPA also approved the Spokane Tribe of Indians human health criteria using a RSC of 1.0 where the tribe used a historical rate of consumption.¹⁸⁸

There is significant difference between risk assessment in other programs such as the Safe Drinking Water Act and Superfund Cleanup Program.¹⁸⁹ The SDWA uses an RSC of 20% and 80% of exposure but does so in terms of goals, not water quality criteria.¹⁹⁰ The SDWA is using this range of RSC for establishing Maximum Contaminant Level Goals that are not by definition regulatory limits.¹⁹¹ This is in contrast to criteria in approved water quality standards that must be enforced through TMDLs and end of the pipe limits in NPDES permits.

In this instance EPA failed to follow its own handbook for developing water quality criteria and address risk in the proposed standards only in terms of surface water exposure through drinking water and fish consumption. Where EPA is including all fish in its proposed consumption rate, there is no basis for using an RSC value of less than 1.0.

EPA acknowledged in its final rule that the RSC values in its proposed rule effectively double counted the fish consumption by using a RSC values less than 1.0. Instead of correcting this error, EPA improperly cited entirely new data and previously undisclosed analysis to adjust the RSC values in its final rule.

¹⁸³ Oregon DEQ, Oregon Human Health Criteria Issue Paper Toxics Rulemaking at 9 (00484). Oregon used RSC values recommended by EPA for 15 of 17 chemicals and a RSC value of 1.0 for all other non-carcinogens.

¹⁸⁴ L. Macchio, Letter to D. Essig (September 5, 2014)(04242-4244)

¹⁸⁵ See n.51. C. Niemi, Handwritten Notes. (“Dennis thinks the Oregon outcome is the right outcome.”)

¹⁸⁶ See n.184.

¹⁸⁷ *Id.* at 2.

¹⁸⁸ See EPA, Letter approving Spokane Tribe of Indians Water Quality Standards.

¹⁸⁹ See n.5. Ecology, Overview at 22.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*; See also Ecology, Draft Comments from Washington and Idaho on EPA 2013 FAQ (April 17, 2013)(04245-4256).

M. The PCB Criteria Adopted by the EPA are Not Based on Substantial Evidence and are Arbitrary and Capricious

EPA failed in its final rule to explain how it has resolved technical issues associated with deriving human health water quality criteria for PCBs and how EPA reconciles the technical difficulties that it has acknowledged in revising PCB standards under the Toxics Substance Control Act (“TSCA”). EPA also failed to justify overly stringent water quality criteria for PCBs while simultaneously authorizing ongoing PCB generation and release to the environment under its TSCA rules and through tribal and federal hatchery operations in the state of Washington.

On June 29, 2015, EPA issued a final update to its CWA section 304(a) criteria for the protection of public health. PCBs were among the chemicals that EPA did not update due to “outstanding technical issues.”¹⁹² The scope of these technical issues is described in statements by EPA justifying its failure to revise the TSCA PCB regulations. Dennis McLerran, in a letter addressed to the Spokane River Regional Toxics Task Force through the Department of Ecology, wrote:

Revising current regulations to reduce inadvertently generated PCBs presents both policy and scientific challenges. Before proposing more stringent regulations on the inadvertent generation of PCBs in pigments, the EPA would seek to further understand the complexities and contributions of not only pigments, but also other congeners that be present [in receiving water]....

...The aggregation of PCB congeners may in some instances be problematic for risk assessment because the toxicity of different PCB congeners varies and a fixed water quality concentration for total PCBs may not adequately represent the variable toxicity of the various congeners actually present in a particular water body. While the EPA is not proposing to undertake a comprehensive analysis of the remaining PCB congeners, we are examining the characterization of PCBs in water bodies. As stated above, characterizing all of the PCBs in the EPA recommended water quality criteria for PCBs (i.e., expressed as total PCBs) is one topic we are discussing.¹⁹³

If EPA does not have the ability for the reasons set forth in the above letter to revise PCB regulations under TSCA, it does not have the ability to revise the PCB NTR criteria applicable to Washington. EPA affirmed as recently as August 3, 2015, that revising PCB regulations “presents both policy and scientific challenges.”¹⁹⁴

EPA should withdraw the final PCB criteria as the uncertainties described above have not been addressed or resolved in the final rule. It is entirely arbitrary and capricious for the agency to conclude on several occasions that it does not have a substantial basis for revising PCB water

¹⁹² See n.129. EPA, Human Health Ambient Water Quality Criteria: Draft 2014 Update at 2.

¹⁹³ D. McLerran, Letter to A. Borgias (February 24, 2015)(04239-04240).

¹⁹⁴ L. Mann, Email to M. Macintyre at 2 (August 3, 2015)(05063-5065).

quality criteria and then propose revised criteria for Washington that will be potentially devastating to Washington industries, local governments and continued hatchery operations.

EPA cannot justify the final criteria in light of the ongoing release of PCBs into the environment through its TSCA regulations. The TSCA regulations allow PCB concentrations up to 50 ppm in manufactured products. 40 C.F.R. §§ 761.3 and 761.20. This amounts to the equivalent of 50 million pg/L allowed under TSCA compared to the EPA proposed PCB water quality criteria in Washington at 7.3 pg/L. EPA has offered no explanation as to why it is now “necessary” to impose water quality criteria that are seven orders of magnitude more stringent than the PCB concentrations it has found not to threaten human health or the environment under TSCA, 40 C.F.R. § 761.20.¹⁹⁵

EPA established PCB criteria that will be impossible to meet in many circumstances due to the ongoing release of PCBs that EPA authorizes as adequately protective under TSCA. A recent study in Washington documented the ubiquitous presence of low PCB levels in manufactured products including paints, used motor oil, road striping, dust suppressants, antifreeze, hydro-seed materials, packaging, toothpaste, hand soap, laundry soap and shampoo.¹⁹⁶

N. The proposed Methylmercury Criterion is Arbitrary and Capricious and Not Supported by Substantial Evidence

EPA should have deferred action on a methylmercury criterion (MeHg) for the state of Washington. EPA adopted a fish tissue concentration criterion of 0.033 mg/kg (wet weight). This value is derived from the outdated basis for the EPA 2001 recommended criteria for methylmercury.¹⁹⁷ EPA acknowledged unresolved technical issues and delayed action on updating this value in the 2015 recommended updated human health water quality criteria.¹⁹⁸ EPA failed to acknowledge the technical problems with the 2001 recommendation and defer any action on adopting this criterion as applicable to Washington.

Washington already has in place criteria for mercury based on human health protection that are more stringent than the NTR criteria.¹⁹⁹ The NTR criteria are 0.14 µg/L (organisms and water) and 0.15 µg/L (organisms only), 40 C.F.R. § 131.36(b), compared to the Washington chronic freshwater criterion of 0.012 µg/L, WAC 173-201A-240, Table 240(3). There is no justification for EPA to impose a flawed criterion on the state of Washington when there is already in place a human health based criterion that is fully protective of human health.

¹⁹⁵ See n.1. NTR at 60848-01, 60868.

¹⁹⁶ City of Spokane, PCBs in Municipal Products (Rev.), Table B-1 (July 21, 2015)(06694-6738).

¹⁹⁷ See n.5. Ecology, Overview at 50 (00056).

¹⁹⁸ See n.128. EPA, Final Updated Ambient Water Quality Criteria for the Protection of Public Health and see n.84. EPA, Human Health Ambient Water Quality Criteria: Draft 2014 Update.

¹⁹⁹ See n.5. Ecology, Overview at 49 (00055).

Ecology has previously identified to EPA the numerous technical difficulties it will have in implementing the EPA tissue based criterion.²⁰⁰ These include unresolved technical issues regarding:

- Mixing zones
- Variances
- Field sampling recommendations
- Assessing non-attainment of fish tissue criteria
- Developing TMDLs for water bodies impaired by mercury
- Incorporating methylmercury limits into NPDES permits.²⁰¹

Ecology has explained to EPA that the EPA guidance on implementing the 2001 criterion does not address these outstanding issues.²⁰² EPA has not responded to these concerns or explained in the final rule how the state and regulated community in Washington can feasibly implement the proposed methylmercury criteria. EPA should accordingly withdraw the MeHg criterion and take no further action on establishing a MeHg criterion for Washington until the recognized technical issues with the outdated 2001 criterion are resolved.

Additionally, even if the 2001 national criterion was still valid, EPA's proposed MeHg fish tissue criterion of 0.033 mg/kg (wet weight) is not. It is overly conservative and unattainable in Washington (and the rest of the United States) as the levels of mercury in fish are consistently higher than the proposed criterion.

EPA derived the proposed criterion following the methodology used to develop the national criterion but changed two key variables in the exposure assumptions: (1) the body weight from 70 kg to 80 kg; and (2) the fish consumption rate of 17.5 g/day to 175 g/day. EPA's FCR of 175 g/day is not defensible and results in overly stringent criteria not only for MeHg, but for PCBs and other pollutants. EPA offers no information or evidence that the nationally-recommended MeHg fish tissue criterion of 0.3 mg/kg would **not be** protective of residents in Washington, even tribal groups with relatively high fish consumption rates, assuming the issues previously discussed can be and are resolved. This is not surprising as there is no support in the technical literature that human health would be adversely affected if residents consumed fish having an average MeHg concentration of 0.3 mg/kg. There likewise can be no scientific evidence supporting the assumption that consuming fish—even at moderate to high ingestion rates—with tissue concentrations exceeding 0.033 mg/kg causes, or is likely to cause, adverse health effects.

There also is controversy surrounding the reference dose for MeHg (0.1 µg/kg/day) used in deriving the national and Washington criterion. The National Academy of Science selected

²⁰⁰ See n.5. Ecology Overview at 50

²⁰¹ See n.5. Ecology Overview.

²⁰² *Id.*

this value based on a Faroes Island study.²⁰³ Island residents consumed both fish and pilot whales, and subtle effects were observed in some children. In addition to mercury, the pilot whales contained elevated levels of PCBs and other chlorinated, recalcitrant pollutants. These confounders were not appropriately considered in establishing the mercury reference dose. The most comprehensive study on potential health effects of mercury in children is the Seychelles Island study.²⁰⁴ In that study, women of childbearing age consumed fish having mercury levels higher than most fish species in the United States and there was no evidence of developmental or neurological adverse effects in the children studied from birth to age five.

Significantly, the MeHg fish tissue criterion is well below observed concentrations of mercury in several fish species collected in Washington waters as documented in various studies.²⁰⁵ For example, the median concentration of mercury in 97 fish samples collected and analyzed in 2004 and 2005 was 0.154 mg/kg (wet weight), five times the proposed MeHg criterion. A study conducted by USGS in Franklin D. Roosevelt Lake and the upper Columbia River basin reported the mean and minimum mercury concentrations in walleye, smallmouth bass, and rainbow trout, all of which were four to five times higher than EPA's proposed criterion.²⁰⁶ The walleye mean and minimum fillet concentration was 0.33 mg/kg and 0.11 mg/kg, respectively; the smallmouth bass mean and minimum fillet concentration was 0.28 mg/kg and 0.17 mg/kg, respectively; and the rainbow trout mean and minimum fillet concentration was 0.20 mg/kg and 0.16 mg/kg, respectively. From a national perspective, for predator (game fish) species for all states combined, the median mercury concentration was 0.285 mg/kg. The 5th percentile concentration was 0.059 mg/kg.²⁰⁷ Based on these data, adoption of the proposed criterion would lead to widespread and pervasive water quality impairment in Washington streams, rivers, and lakes. The economic impact would be staggering, while the human health benefit would likely be none.

Indeed, the final criterion could result in adverse health impacts if people reduce their consumption of fish because of this criterion. The health benefits of eating fish are well-documented relative to the potential risks of contaminants in the fish.

²⁰³ National Academy of Science, Toxicological effects of methylmercury. Committee on the Toxicological Effects of Methylmercury, Board on Environmental Studies and Toxicology, National Research Council. National Academy Press, (2000)(07570-7934).

²⁰⁴ Davidson, et al., Effects of Prenatal and Postnatal Methylmercury Exposure from Fish Consumption on Neurodevelopment: Outcomes at 66 months of Age in the Seychelles Child Development Study. 280 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 701-707 (1998)(07349-7355).

²⁰⁵ Ecology, Washington State Toxics Monitoring Program: Contaminants in Fish Tissue from Freshwater Environments in 2004 and 2005 (2007)(PublicationNo. 07-03-024)(available at www.ecy.wa.gov/biblio/0703024.htm)(07356-7390).

²⁰⁶ United States Geological Survey, Concentrations of Mercury and Other Trace Elements in Walleye, Smallmouth Bass, and Rainbow Trout in Franklin D. Roosevelt Lake and the Upper Columbia River, Washington, USGS Open-File Report 95-195 (1995)(available at <http://pubs.er.usgs.gov/publication/ofr95195>)(07391-7429); See also Munn and Short, Spatial Heterogeneity of Mercury Bioaccumulation by Walleye in Lake Roosevelt and the Upper Columbia River, Washington. 126 TRANSACTIONS OF THE AMERICAN FISHERIES SOCIETY 477-487 (1997)(07935-7946).

²⁰⁷ EPA, The National Study of Chemical Residues in Lake Fish Tissue (2009)(EPA-823-R-09-006)(07430-7433).

For major health outcomes among adults, based on both the strength of the evidence and the potential magnitudes of effect, the benefits of fish intake exceed the potential risks. For women of childbearing age, the benefits of modest fish intake, excepting a few selected species, also outweigh risks.²⁰⁸

EPA failed to evaluate the voluminous information regarding the health benefits of consuming fish. The overly-conservative MeHg criterion value of 0.033 mg/kg is misleading to the public and implies that the potential risks of mercury in fish (even at such a low level) outweigh any health benefits. The health benefits are predictable and supported by numerous studies, whereas the adverse effects assumed by EPA are highly speculative and largely theoretical, assuming that they exist at all.

Finally, EPA also fails to discuss or consider the protective effect selenium has on potential mercury health effects although many toxicologists have advocated that traditional risk assessments of mercury in fish without concomitant information on tissue selenium levels is scientifically flawed and misleading.²⁰⁹ Recent reports have explained the mechanisms of this protective effect.²¹⁰ When the molecular? or molar? ratio of selenium to mercury in fish tissue exceeds 1.0 in freshwater and marine fish, a protective effect can be assumed.²¹¹ EPA should evaluate the selenium/mercury molecular ratios in fish from Washington waters and use this information to assess the need for a human health MeHg fish tissue criterion 10 times more stringent than the nationally recommended MeHg criterion.

O. EPA has improperly used Bioaccumulation Factors rather than Bioconcentration Factors in deriving the proposed criteria

As part of the process of updating the national human health water quality criteria in 2014, EPA proposed to alter its prior convention of using BCFs to represent bioaccumulation in the criteria derivation equation and instead used modeled BAFs calculated via the EPI Suite software package. In finalizing the human health criteria guidance in 2015, EPA apparently departed from strict reliance on the EPI Suite model and chose to select a value representing bioaccumulation (a BAF or BCF) for each substance using a decision tree published in a 2003 technical document (i.e., Figure 3-1 from EPA-822-R-03-030, December 2003). That decision-tree and information in the chemical-specific criteria support documents suggest that EPA selected BAFs or BCFs for criteria derivation from either measured or predicted BAFs or BCFs from laboratory or field studies.

²⁰⁸ Mozaffarian and Rimm, Fish Intake, Contaminants, and Human Health: Evaluating the Risks and the Benefits, 296 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 1885 at 1885 (2006)(07434-7449).

²⁰⁹ Zhang, Chan and Larssen, New Insights into Traditional Health Risk Assessments of Mercury Exposure: Implications for Selenium, 48 ENVIRONMENTAL SCIENCE & TECHNOLOGY 1206 (2014)(07947-7953).

²¹⁰ Ralston and Raymond, Dietary Selenium's Protective Effects Against Methylmercury Toxicity, 278 TOXICOLOGY 112 (2010)(07954-7959).

²¹¹ Peterson, et al., How Might Selenium Moderate the Toxic Effects of Mercury in Stream Fish of the Western U.S., 43 ENVIRONMENTAL SCIENCE & TECHNOLOGY 3919 (2009)(07450-7467).

A considerable body of science exists concerning the accumulation of substances in fish tissue and the choice of a BAF or BCF can have a large influence on the calculated criteria value. Moreover, it is widely recognized that BAFs and BCFs are influenced by several local environmental factors (e.g., food web structure, water temperature, dissolved carbon). Therefore, it is important to understand the basis for EPA's selection of a specific BCF or BAF so that states, the public, and the regulated community may consider the appropriateness of the choice for a particular situation and allow states to modify the national BCF or BAF such that it better represents state-specific conditions.

Unfortunately, the technical documentation issued with EPA's updated 2015 criteria is wholly insufficient to allow technical comment on EPA's selection of BAFs or BCFs, and whether those are appropriate for Washington. This is because EPA has not provided sufficient detail about the origin of the BAF or BCF data upon which the selected value is based nor has EPA provided the specific procedures and choices the agency used to derive the BAF or BCF that was ultimately selected for criteria derivation. This lack of transparency in describing the origin of the BAFs and BCFs violates the APA because it effectively prohibits substantive comment on the technical merits of EPA's choice of a national value and on the appropriateness of that value in specific states or water bodies, such as those EPA is proposing for Washington.

EPA has failed to provide adequate information that clearly identifies the specific procedures used to select each BAF or BCF value and present the data in a manner such that interested and affected parties can reproduce and evaluate EPA's calculations. Absent such information, EPA should withdraw the final rule relying on BAF values.

P. EPA's Economic Impact Analysis Fails to Include an Adequate Assessment of Compliance with the Final PCB Criteria

EPA has erroneously excluded the incremental cost of compliance with its proposed PCB criteria in both the draft and final economic impact analysis. Available data indicates that large portions of state waters will be considered impaired under CWA section 303(d) for failing to meet the proposed PCB criteria. Ecology has also concluded that essentially every publicly owned wastewater treatment plant in Washington has the potential to cause or contribute to a violation of the PCB criteria and that the facilities will require tertiary membrane filtration treatment to address PCBs. The technology to treat for PCBs in a five Million Gallon a Day (MGD) facility would be membrane filtration followed by reverse osmosis, with a Net Present Value (2013 dollars) cost of \$75 to \$175 million as documented in Attachment C—HDR, Treatment Technology Review and Assessment for Association of Washington Business, Association of Washington Cities and Washington State Association of Counties, at 38, Table 9 (December 2013).

The draft economic impact analysis did not address PCBs on the pretext that there is no water column data in Washington indicating ambient PCB concentrations below the NTR but above the proposed PCB criteria. In section 4.1.2 in the draft economic impact analysis EPA represents that it evaluated discharge monitoring and permit application data and "ambient pollutant concentrations from the Environmental Information Management (EIM) database." In section 5.1 of the draft analysis EPA represents that it evaluated "potential incremental impairment" based on available EIM data. EPA purports in footnote 17 of the document to

exclude all “U” data for non-detected results or results that could not be used but “kept” “J” data where an analyte is positively identified and the reported result is an estimate.

It is inexplicable, given these parameters, how EPA represented in Exhibit 5-1 in the draft economic impact analysis that there is no PCB water column in the EIM database that is either unqualified or J qualified. In fact, there is substantial PCB water column data for Puget Sound and the major tributaries to Puget Sound. This data was collected by or for Ecology relatively recently in 2009 and 2010.²¹² This report has been reviewed and that data in the report has been included in the EIM database.²¹³ From this report alone there are well over 12,000 PCB sampling results from Haro Strait, the Strait of Juan de Fuca, the Whidbey Basin, Main Basin, South Sound and Hood Canal.²¹⁴ This includes PCB water column data for total congeners collected at each of these sites.²¹⁵ All of the total congener data is either unqualified or J qualified. This data should have been identified and listed in Exhibit 5-1 in the economic impact analysis.

EPA failed to adequately acknowledge in the final rule that all of the total PCB water column data from the 2011 Ecology report is above the PCB criteria proposed for Washington but below the NTR criteria. See Table 1, *supra*, at XX. Without citing this data the final economic analysis estimates that there would be at least 25 additional water body segments listed as impaired for PCBs in Washington.²¹⁶ EPA failed to consider, however, available data documenting that dischargers are potentially going to cause or contribute to a violation of its proposed PCB criteria. EPA appears to have conveniently placed blinders on its review by relying on discharge monitoring data knowing that such data, if collected, is based on an EPA test method with detection levels that are above even the NTR criteria. In doing so EPA ignored data from Ecology on wastewater treatment plants that document levels of PCB concentrations that are well above the proposed PCB criteria. In fact, every wastewater treatment plant sampled by Ecology (which includes two of the specific facilities evaluated by EPA in the economic impact analysis), with the exception of two facilities with reporting levels of 600 pg/L, were well above the proposed criteria.²¹⁷ See Table 2, *supra* at XX.

²¹² Ecology, Control of Toxic Chemicals in Puget Sound: Characterization of Toxic Chemicals in Puget Sound and Major Tributaries, 2009-10 (January 2011)(05155-5395) (available at <https://fortress.wa.gov/ecy/publications/documents/1103008.pdf>)

²¹³ Ecology, Screen-shot of EIM Search Result (December 8, 2015)(available at [https://fortress.wa.gov/ecy/eimreporting/Eim/EIMSearchResults.aspx?ResultType=EIMTabs&StudyName=toxic+chemicals+in+puget+sound&StudyNameSearchType=Contains \(06753\)](https://fortress.wa.gov/ecy/eimreporting/Eim/EIMSearchResults.aspx?ResultType=EIMTabs&StudyName=toxic+chemicals+in+puget+sound&StudyNameSearchType=Contains (06753))).

²¹⁴ Ecology, Email (07311) and attached EIM Data for Puget Sound (December 8, 2015)(05987). The attached data is limited to water column data for total PCBs. The entire data set will be submitted separately.

²¹⁵ *Id.*

²¹⁶ EPA, Economic Analysis for Water Quality Standards Applicable to the State of Washington (Oct. 21, 2016).

²¹⁷ Ecology, Control of Toxic Chemicals in Puget Sound Summary Technical Report for Phase 3: Loadings from POTW Discharge of Treated Wastewater, Figure 2 (December 2010)(Publication No. 10-10-057)(05746-5986).

The failure of EPA to consider this data is inexcusable where EPA has relied on this information to perform a narrative reasonable potential analysis for three municipalities on the Spokane River.²¹⁸

The economic impact analysis for PCBs should have also considered stormwater. EPA excluded stormwater from the analysis by failing to identify PCB data in Table 5-1. PCB concentrations are present in stormwater monitoring in the City of Spokane and Western Washington.²¹⁹ The median concentration for PCBs in Western Washington stormwater is 0.011 µg/L. The analysis should include some assessment of the economic impact of managing stormwater discharges.

EPA should have also addressed the economic impact of proposed PCB criteria on the continued operations of tribal and federal fish hatcheries. EPA should have explained how it intends to regulate hatcheries that discharge to and release salmon in Puget Sound, Hood Canal, Haro Strait and the Strait of Juan de Fuca. EPA provided no explanation as to how hatcheries can be allowed to continue operations knowing that they are a significant source of PCBs in waters that will be considered impaired for PCBs under the final criteria. EPA is the NPDES permit authority for these facilities and should have fully accounted for the economic impact of its final criteria on their continued operations.

The economic impact analysis should also include an assessment of the impact from potential section 303(d) PCB listings based on fish tissue. The economic impact analysis acknowledges that fish tissue data can be a basis for listing under the Ecology Policy 1-11. EPA offers no explanation as to why it failed to consider PCB fish tissue data that is available in the EIM database. This is particularly relevant as Washington is the only state in EPA Region 10 to use fish tissue data as a basis for 303(d) listings. EPA Region 10 has been adamant with the Ecology that it not revise this policy to remove consideration of fish tissue.²²⁰

EPA should withdraw the final rule based on the inadequate economic impact analysis and provided additional opportunity for public comment on the revised economic impact analysis.

Q. The Final Rule Constitutes a Significant Regulatory Action under Executive Order 12866 “Regulatory Planning and Review” and Executive Order 13563 “Improving Regulation and Regulatory Review”

Executive Order 12866 “Regulatory Planning and Review” provides that significant regulatory actions must be submitted for review to the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). E.O. 12866, 58 Fed. Reg. 51,735 (October 4, 1993). A “significant regulatory action” is any regulatory action that “will

²¹⁸ EPA, City of Coeur d’Alene Revised Fact Sheet NPDES Permit No. ID0022853 at 17 (2013)(07468-7569).

²¹⁹ W. Hobbs, Memorandum Spokane Stormwater (October 15, 2015)(06427-6435); Ecology, Western Washington NPDES Phase I Stormwater Permit: Final S8.D Data Characterization 2009-2013 (February 2015)(Ecology Publication No. 15-03-001)(05592-7745);King County, PCB/PBDE Loading Estimates for the Greater Lake Washington Watershed (September 2013)(06546-6617).

²²⁰ K. Susewind, Email to D. Opalski (March 17, 2014)(04740-4742).

likely result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order." E.O. 12866 § 3(f).

As EPA notes in its Guidelines for Preparing Economic Analyses (December 17, 2010), any one of the four criteria listed can trigger a proposed regulatory action to be defined as "significant," while those meeting the first criteria are generally defined as "economically significant." EPA Guidelines for Preparing Economic Analyses § 2.1.1. The agency makes the initial determination of what regulatory actions may be significant, but OIRA, not the agency, makes the final determination of which rules are considered to be significant. E.O. 12866 § 6(a)(3)(A). For each matter identified as a significant regulatory action the issuing agency must provide to OIRA a draft of the proposed regulatory action, along with an explanation of the need for the proposed action and how the action will meet that need, and an assessment of the potential costs and benefits of the action. E.O. 12866 § 6(a)(3)(B).²²¹

The principles set out in E.O. 12866 were supplemented and reaffirmed in Executive Order 13563 "Improving Regulation and Regulatory Review" E.O. 13563 76 Fed. Reg. 3821 (January 21, 2011). E.O. 13563 emphasizes that in complying with E.O. 12866 agencies must use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible (§ 1(c)), and that regulations should be adopted through a transparent process involving public participation (§ 2). Each agency is to ensure "the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions." E.O. 13563 § 5.²²²

Here, EPA determined that neither its proposed nor final rules were a "significant regulatory action" under E.O. 12866 and were "therefore, not subject to review under Executive Orders 12866 and 13563." 80 Fed. Reg. 55,073 § VI.A; 81 Fed. Reg. 85,417, 92,466 § V.A. The sole basis given by EPA for this determination was the statement that "the proposed rule does not

²²¹ For actions that fall into the § 3(f)(1) category of *economically* significant regulatory actions, issuing agencies must go further and provide OIRA with (i) an assessment, including the underlying analysis, of benefits anticipated from the regulatory action together with, to the extent feasible, a quantification of those benefits; (ii) an assessment, including the underlying analysis, of costs anticipated from the regulatory action together with, to the extent feasible, a quantification of those costs, and (iii) an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. E.O. 12866 § 6(a)(3)(C).

²²² Both E.O. 13563 and subsequent E.O. 13579 set forth procedures by which agencies engage in retrospective analyses of existing regulations. E.O. 13563 § 6 (05988-90); E.O. 13579, 76 Fed. Reg. 41,587 (July 11, 2011) (06363-6366). Executive Order 13610 "Identifying and Reducing Regulatory Burdens" sets out additional requirements, including public participation, for regular retrospective review efforts by OIRA. E.O. 13610, 77 Fed. Reg. 28469 (May 10, 2012) (06351-6354).

establish any requirements directly applicable to regulated entities or other sources of toxic pollutants.” *Id.*

EPA should withdraw the rule on the basis that it was not properly considered a significant regulatory action based on the rule’s economic impacts. EPA’s focus on the “directly applicable” costs of the Rule is inconsistent with E.O. 12866. E.O. 12866 contains no requirement that regulatory action be imposed directly on a regulated entity in order to be considered a significant regulatory action. To the contrary, the entire approach of E.O. 12866 is to assess the totality of the costs and benefits of significant rules on society and the economy as a whole. This is evident in E.O. 12866’s directive that agencies “assess *all* costs and benefits of available regulatory alternatives, including the alternative of not regulating.” (Emphasis added).

EPA’s determination is also inconsistent with characterization of rules adopting water quality criteria for other states. In December 2016 EPA described as “significant regulatory action” its rule adopting water quality standards for certain waters under the state of Maine’s jurisdiction. 81 Fed. Reg. 92,466, 92,486. EPA’s standards for these waters involve fewer criteria, lower estimated compliance costs, and fewer affected facilities than Washington’s rule. The discrepancy in treatment suggests that rather than actually assessing whether the rule falls within the definition of “significant regulatory action,” EPA decided at the outset that it did not want to categorize the proposed rule as a significant regulatory action, presumably in order to avoid the full economic analyses by OIRA required by E.O. 12866.

Moreover, EPA’s characterization of the rule as not establishing “directly applicable” requirements is misleading. There is nothing permissive about a state’s obligation under the CWA to ensure its NPDES permits include limitations on discharges necessary to comply with the standards in the final rule. *See, e.g.*, 81 Fed. Reg. 85,417, 85,434 §V.C. EPA acknowledges that NPDES-permitted facilities for which the revised human health criteria are more stringent than applicable aquatic life criteria face new compliance costs. *Id.* at § VI. Far from speculative, EPA identified a subset of point source facilities for which it could reasonably estimate the costs of complying with the final rule. 81 Fed. Reg. 85,417, 85,433 §IV.A. Moreover, Ecology has notified some permittees that it intends to translate the rule’s criteria into enforceable NPDES permit limits.

The rule does constitute an economically significant regulatory action requiring economic analyses by OIRA. A cost analysis prepared in 2013 by HDR Engineering estimated the cost of compliance by regulated industries and local governments with Oregon’s water quality standards that are consistent with the EPA Final Rule in a range of \$5 billion dollars to \$11 billion dollars for just the 73 “major” NPDES permits out of 409 NPDES permits administered by Ecology. This does include the 18 general permits administered by Ecology or federal individual and general NPDES permits administered by EPA in Washington.²²³ Compliance costs would be borne not only by local governments and industries, but would also apply to federal, state, Tribal and other private fish hatchery programs in Washington. Ecology has identified returning salmon

²²³ HDR, Treatment Technology Review and Assessment, Association of Washington Business Association of Washington Cities, Washington State Association of Counties (December 14, 2013). Attachment C.

as contributing up to 10% of the PCB loadings associated with hatcheries.²²⁴ In 2006 Ecology published a report documenting the PCB loadings associated with hatcheries.²²⁵ As illustrated by Ecology's section 401 certification for the Leavenworth Federal Fish Hatchery, this is a statewide problem.²²⁶ EPA's rule could very well have the unintended consequence of shutting down these very fish hatcheries.

The "economic analysis" that EPA had prepared by Abt Associates "in the spirit" of E.O. 12866 is no substitute for the full economic analyses required by OIRA.²²⁷ As but one example, E.O. 12866 requires a cost benefit analysis of feasible alternatives to a proposed rule—such as the water quality standards proposed by Ecology—and an explanation of why EPA's rule is preferable to the identified potential alternative. E.O. 12866 § 6(a)(3)(C). The consideration of alternative approaches is in fact one of the key elements of the E.O. 12866 economic analysis. *See* OMB Circular A-4 (September 17, 2003) at 2, 7-9.²²⁸ The analysis "should study alternative levels of stringency to understand more fully the relationship between stringency and the size and distribution of benefits and costs among different groups." *Id.* at 8. At least one of the alternatives should be a less stringent alternative to the agency's preferred option.²²⁹ The agency must also consider the option of deferring to regulation at the State or local level and assess whether federal regulation is the best solution. *Id.* at 6. Finally, the agency should conduct both a benefit-cost analysis and cost-effectiveness analysis. The Abt Associates "economic analysis" does not examine any alternatives to EPA's rule. It does not include any consideration of the alternative of leaving it to Ecology to develop appropriate human health criteria. Nor does it involve either benefit-cost or cost-effectiveness analyses.

In addition to economic costs, the rule should have been identified as significant based on its novel legal and policy issues. A "significant regulatory action" includes any regulatory action that raises "novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order." E.O. 12866 § 3(f). As explained above, EPA's derivation of human health criteria for Washington is based on novel legal interpretations of treaty rights that are unsupported by case or statutory law. Moreover, the Rule raises novel policy issues insofar as EPA's methods for deriving the criteria are inconsistent with EPA policy.

²²⁴ Ecology, Control of Toxic Chemicals in Puget Sound, Assessment of Selected Toxic Chemicals in the Puget Sound Basin, 2007-2011.

²²⁵ Ecology, Persistent Organic Pollutants in Feed and Rainbow Trout from Selected Trout Hatcheries (April 2006) (Ecology Pub. No. 06-03-017) (04681-4732).

²²⁶ Ecology, Final 401 Certification for the Leavenworth National Fish Hatchery, Order No. 7192 (January 7, 2010) (04669).

²²⁷ Abt Associates, Economic Analysis for the Revision of Certain Federal Water Quality Criteria Applicable to Washington (August 17, 2015).

²²⁸ OMB Circular A-4 sets out OMB's guidance to agencies on the development of regulatory analysis required by E.O. 12866 § 6(a)(3)(c) (2013) (04983-5030). *See also* OIRA, Regulatory Impact Analysis: Frequently Asked Questions (FAQs) (February 7, 2011) (05031-5042); OIRA, Regulatory Impact Analysis: A Primer (05139-5154).

²²⁹ *Id.* OIRA, Regulatory Impact Analysis: A Primer at 7; OIRA, Regulatory Impact Analysis: Frequently Asked Questions (FAQs) at 3.

Based on the novel legal and policy issues involved, EPA should have notified OIRA and OMB that this rule involved a potentially significant regulatory action.

EPA should repeal or withdraw the EPA Final Rule based on the failure of the agency to comply with E.O. 12866 and 13563.

IV. CONCLUSION

For the reasons described above, Petitioners request that EPA reconsider the State of Washington's Human Health Water Quality Standards and Implementation Tools, submitted to EPA on August 1, 2016; and repeal or withdraw the Final Rule Revision of Certain Federal Water Quality Standards Applicable to Washington, 81 Fed. Reg. 85,417 (Nov. 28, 2016).

Dated this 21st day of February, 2017.



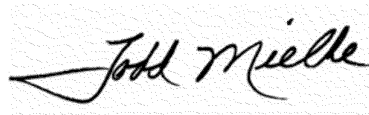
Christian McCabe
Executive Director
Northwest Pulp & Paper Association



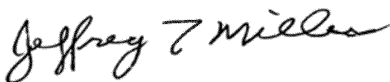
Jerry Schwartz
Senior Director
Energy and Environmental Policy
American Forest & Paper Association



Gary Chandler
Vice President of Government Affairs
Association of Washington Business



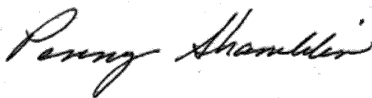
Todd Mielke
Chief Executive Officer
Greater Spokane Incorporated



Jeffrey T. Miller
President & Executive Director
Treated Wood Council



Dallin Brooks
Executive Director
Western Wood Preservers Institute



Penny Shamblin
Counsel for
Utility Water Act Group



John Stuhlmiller
Chief Executive Officer
Washington Farm Bureau

To: Schnare, David[schnare.david@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; McGartland, Al[McGartland.Al@epa.gov]
From: Bromberg, Kevin L.
Sent: Wed 3/8/2017 9:40:48 PM
Subject: FW: Thank you for registering for the Regulatory Reform Roundtables
Reg Reform Roundtable Invite Final.pdf

I am registered for the Monday discussion. This is moderated by the Deloitte person who helped the UK Reg Reform Initiative

From: Hermann, Megan (US - Arlington) [mailto:mhermann@deloitte.com]
Sent: Wednesday, March 08, 2017 11:41 AM
To: Hermann, Megan (US - Arlington)
Subject: Thank you for registering for the Regulatory Reform Roundtables

Hi All,

Thank you for registering for the Regulatory Reform Roundtables. We would like to extend the invitation to your colleagues. Please feel free to forward the attached invitation to anyone you know that may be interested. We will send a calendar invite with additional information as we get closer to the roundtable dates.

If you have any questions, please do not hesitate to reach out.

Respectfully,

Megan

Megan Hermann
Deloitte Consulting, LLP
Mobile: { Personal Phone/Ex. 6 }
www.deloitte.com

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

v.E.1

Event Details

Registration:

Click to [Register](#) for one of the following dates*

March 13th 12:00 PM – 1:30 PM

March 14th 8:30 AM – 10:00 AM

March 15th 12:00 PM – 1:30 PM

Location:

701 Pennsylvania NW
Suite 50039
Washington, DC

Meeting Agenda:

- ☐ Introductions
- ☐ Overview
- ☐ How agencies can respond to the Executive Orders

Facilitator:

Jitinder Kohli

Jitinder is a managing director at Deloitte Consulting LLP. Until 2009, he was a top level official in the British government. As Chief Executive of the Better Regulation Executive between 2005 and 2009, he led the British government's highly successful approach to reducing regulatory burdens. During his tenure, the UK implemented major reforms saving business over GBP5 billion annually.

* If the link doesn't work please copy and paste the following into Internet Explorer or email mhermann@deloitte.com

<https://www.deloitteconference.com/profile/form/index.cfm?PKformID=0x1152788fff5>

Join us for a private Roundtable Discussion on Regulatory Reform

The President recently signed two Executive Orders that introduce new requirements for federal departments and agencies to reduce the costs of regulation. The Executive Orders' main requirements include:

- ☐ "One-In, Two-Out": Agencies are required to identify two regulations for elimination when they bring in new regulations
- ☐ "Net-Zero": Net additional costs of regulation in Fiscal Year 2017 must be zero. That means that for every dollar of additional cost faced by private entities associated with regulations, there must be an equivalent reduction elsewhere
- ☐ "Regulatory Reform Officers": Within 60 days of the order agencies will designate a Regulatory Reform Officer to oversee implementation of reform initiatives and policies
- ☐ "Regulatory Reform Task Forces": Within 90 days of the order, the Regulatory Reform Task Force will provide a progress report to agency/department leadership

We've been thinking about how the Executive Orders could impact federal departments and agencies. **We'd like to invite you to a collaborative discussion in a private setting where you can discuss how to respond to the Executive Orders.** Roundtable facilitator, Jitinder Kohli, has extensive experience in regulation reform and will facilitate an open dialogue with your counterparts from across the US government.

This session is **invite only**, but please let us know if there is someone else you would like to attend.

For more information on the Executive Orders:

- ☐ Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs
<https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling>
- ☐ Presidential Executive Order on Enforcing the Regulatory Reform Agenda
<https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>

- “What President Trump can Learn from the UK about Reducing Regulations” – Forbes
<http://www.forbes.com/sites/realspin/2017/01/27/what-president-trump-can-learn-about-reducing-regulations-from-the-uk/#2e4bde412fdf>
- “Trump Regulatory Rollback: 'Not What You Regulate, But It's How You Regulate'” – US News and World Report
<https://www.usnews.com/news/articles/2017-01-30/trump-regulatory-rollback-not-what-you-regulate-but-its-how-you-regulate>

This publication contains general information only and none of the member firms of Deloitte Touche Tohmatsu Limited or their respective related entities is, by means of this publication, rendering business, financial, investment, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. None of the member firms of Deloitte Touche Tohmatsu Limited or their respective related entities shall be responsible for any loss sustained by any person who relies on this publication.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/about for a detailed description of DTTL and its member firms. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2016 Deloitte Development LLC. All rights reserved.

To: Flynn, Mike[Flynn.Mike@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Hull, George
Sent: Tue 3/7/2017 3:57:30 PM
Subject: Hot Issues Meeting Today

Mike and David,

I lead the PADs/Comms Director's weekly meeting every Tuesday from 2:30 pm. I'll be late for the 3:00 Hot Issues meeting. - George

To: Schnare, David[schnare.david@epa.gov]
From: Vizian, Donna
Sent: Thur 3/9/2017 8:33:09 PM
Subject: we received OPM approval of your extension

Personal Matters/Ex. 6

To: Knapp, Kristien[Knapp.Kristien@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Grantham, Nancy
Sent: Mon 3/13/2017 5:39:41 PM
Subject: RE: mte notice

Just sent

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

-----Original Message-----

From: Knapp, Kristien
Sent: Monday, March 13, 2017 1:39 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Re: mte notice

I just forwarded to Nancy.

Sent from my iPhone

> On Mar 13, 2017, at 1:35 PM, Schnare, David <schnare.david@epa.gov> wrote:
>
> Kristen
> Loren needs the word version, also asap. Who has that?
>
> Sent from my iPhone
>
>> On Mar 13, 2017, at 1:26 PM, Knapp, Kristien <Knapp.Kristien@epa.gov> wrote:
>>
>> Just handed to Loren.
>>
>> Sent from my iPhone
>>
>>> On Mar 13, 2017, at 1:21 PM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:
>>>
>>> Thx
>>>
>>> Sent from my iPhone
>>>
>>>> On Mar 13, 2017, at 1:14 PM, Knapp, Kristien <Knapp.Kristien@epa.gov> wrote:
>>>>
>>>> I'm in a taxi now en route to DOT.
>>>>
>>>> Sent from my iPhone
>>>>
>>>> Begin forwarded message:
>>>>
>>>> From: <DC-WJCN-3312-M@epa.gov<mailto:DC-WJCN-3312-M@epa.gov>>
>>>> Date: March 13, 2017 at 1:15:50 PM EDT
>>>> To: <knapp.kristien@epa.gov<mailto:knapp.kristien@epa.gov>>
>>>>

>>>> <image2017-03-13-131549.pdf>

To: Brown, Byron[brown.byron@epa.gov]; Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Dravis, Samantha
Sent: Mon 3/6/2017 7:17:37 PM
Subject: RE: Rmp

FWIW, This is what OMB sent over Friday afternoon after our call on this.

EPA Regulatory Action CAA • Risk Management Program Final Rule (1/13/17). This final rulemaking is on the Accidental Release Prevention Requirements of the Risk Management Program under the Clean Air Act.

Deliberative Process Privilege/Ex. 5

-----Original Message-----

From: Brown, Byron
Sent: Monday, March 6, 2017 11:51 AM
To: Schnare, David <schnare.david@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: Rmp

David, did we already extend the effective date to 5/20?

-----Original Message-----

From: Schnare, David
Sent: Monday, March 6, 2017 11:45 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>
Subject: RE: Rmp

Deliberative Process Privilege/Ex. 5

d.

-----Original Message-----

From: Jackson, Ryan
Sent: Monday, March 6, 2017 11:26 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: Re: Rmp

I tend to agree and believe we received a petition for reconsideration February 28. Brian hope has a copy at OEX.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

> On Mar 6, 2017, at 9:21 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>
> The RMP implementation date is March 21st because of the Preibus memo (it will go effective on March 21st). We need to grant an administrative stay for a period of 60 or 90 days, which will provide certainty to companies that they do not have to comply with these deadlines by March 21st. In the short term, we should grant this stay.
>
> In coming weeks, we will likely receive a petition for reconsideration, which will allow us to more permanently pull back the rule and go through a reconsideration process.
>
> The Obama DHS put out something during inter-agency review of this rule saying that having facilities share this type info would be "precedent-setting." This rule has raised numerous security concerns and it's something I believe we should take a hard second look at.
>
> I am copying in Byron and David, in case they have additional thoughts.
>
> -----Original Message-----
> From: Jackson, Ryan
> Sent: Monday, March 6, 2017 7:13 AM
> To: Dravis, Samantha <dravis.samantha@epa.gov>
> Subject: Rmp
>
> We have a petition in to ask to issue an administrative stay of the rmp final rule. We need to determine our next steps on that. Eager to get your thoughts. Feb 28 petition.
>
> Ryan Jackson
> Chief of Staff
> U.S. EPA
> (202) 564-6999

To: Dravis, Samantha[dravis.samantha@epa.gov]; Schnare, David[schnare.david@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]
Cc: Grantham, Nancy[Grantham.Nancy@epa.gov]
From: Grantham, Nancy
Sent: Wed 3/8/2017 9:39:13 PM
Subject: NIST Press Release we discussed today
CR Panel Cosponsors News Release DRAFT 340pm 3-3-17 clean EPA Update.docx

FYI .. NIST would like this to go on Friday, 3/9.

Thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

3/9- Head's up: NIST Press Release: NIST plans to issue the attached draft press release on Thursday that announces that both EPA and USACE have joined as non-financial cosponsors of the [Community Resilience Panel for Buildings and Infrastructure Systems](#). The Panel is an independent organization devoted to reducing barriers to community resilience – the capacity to prepare for anticipated hazards, adapt to changing conditions, and withstand and recover rapidly from disruptions. Besides EPA and USACE other federal partners include DHS, FEMA, HUD, NOAA, and NIST. The PR does a good job of explaining EPA's role on the panel. This PR will go out on March 9 which also happens to be the first day of the Panel meeting being held in Coral Gables, FL (EPA is attending). Let me know if you have any questions. **NIST is holding this release until they get EPA's OK. Can you please let me know ASAP if it's ok for them to issue?**

To: Hale, Michelle[hale.michelle@epa.gov]; Konkus, John[konkus.john@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/7/2017 3:52:33 PM
Subject: Fwd:
[Infrastructure Presentation 20170303.pdf](#)
[ATT00001.htm](#)
[Building the Infrastructure of the Future.pdf](#)
[ATT00002.htm](#)

For the meeting in the morning. However at some point in this mix, Pruitt, perry, chao will speak. I'm his plus one on this since its infrastructure, and I'm the big spending liberal in the group. He has a noon lunch and then 1:35 with Mulvaney in the EEOB. I have confirmed Mulvaney is meeting with a number of cabinet secretaries not simply us.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

Begin forwarded message:

From: "Catanzaro, Michael J. EOP/WHO" <catanzaro.michael@eop.gov>
To: "Jackson, Ryan" <jackson.ryan@epa.gov>

EOP/Ex. 6

Wanted to be sure you had this on infrastructure. Meeting tomorrow with the private sector working group at the White House.

9:30 Introductions
9:40 Opening Remarks by Reed on the importance of infrastructure
9:50 Infrastructure and the Environment -- Lynn Scarlett
10:00 Infrastructure and Innovation -- Elon Musk
10:15 Key Issues when considering federal infrastructure policy
* What is the problem with infrastructure we are trying to solve?
* What is the federal government's role in resolving those problems?
10:45 Break
11:00 What are possible solutions?
* Transformative projects - how do we identify projects that are of national importance and will have a lasting impact on our economy?
* Technology - to what degree with autonomous vehicles, drones, urbanization, telecommuting, and renewables impact our need for infrastructure?
* Permitting - how do we reform the project approval process?
* Funding and financing - how do we address the current under-investment in infrastructure? Should we raise taxes, incentivize user fees, expand TIFIA, and/or create an infrastructure bank?

* Creating incentives for state/local governments - how can the federal government use the power of the purse to incentivize more self-help, performance measures, and other good policies?

11:50 Wrap up session and coordinate reporting out

12:00 End session and walk to lunch

Building the Infrastructure of the Future

I. OUR NATIONAL INFRASTRUCTURE CHALLENGE

Investment in infrastructure has the capacity to stimulate and enhance the productivity of the economy in both the short and long term. It is an investment that has a multiplier effect throughout the economy, generating lasting economic, social and environmental benefits.

However, years of underfunding our infrastructure have imposed significant economic and social costs on our country. The US falls short of the best-practice benchmark of 3% of GDP invested in infrastructure by approximately \$100B annually.¹ The current annual federal expenditure of \$100B is not sufficient to make necessary improvements or to restore existing infrastructure to a state of good repair. This has resulted in condition and performance failures and loss of international competitiveness: our civilian infrastructure is plagued by increasing congestion and unreliability (clogged roads alone costs \$160B/year), aging assets (240,000 water mains break every year) and the US ranks 16th among developed nations in infrastructure quality. The four key problems are as follows:

- 1. A complex mix of federal, state, local and private stakeholders** across ownership, operation, regulation and funding undermines implementation of reforms and blurs accountability. Projects must navigate a high degree of complexity, often engaging 50+ agencies, state, city and federal reviews. There is large variation at local and state levels and procedures are not standardized (e.g., states have separate environmental statutes).
- 2. Lack of sustainable revenues** undermines asset economics and financing strategies – particularly for roads and bridges, water and wastewater, and transit.² Without sustainable funding, sponsors are unable to adequately plan and the construction industry is not incentivized to invest in equipment and training. Infrastructure is supported by a combination of federal and state and local tax money and user fees, which are inadequate to cover ongoing costs of existing assets.
- 3. Inefficient decision-making processes** across planning, project selection, procurement, permitting and construction are too long and too expensive. For example, it can take 10 years or more to plan and implement the repair of an existing bridge. Previous efforts³ have proven inadequate in providing for strict timelines and concurrent review processes. It is estimated that six years of delays cost \$3.6T. In addition, dynamic value engineering is not widely used to control the cost of major projects.
- 4. Inadequate consideration of transformational new technologies** means that public capital projects often plan for building the infrastructure of yesterday (e.g., billion-dollar parking garages at airports) not tomorrow.

II. PROPOSED SOLUTIONS

To address the challenges, five preliminary strategies can be pursued through targeted initiatives:

- 1. Set national priorities and incentivize state and local participation.** A ranking system with clear criteria based on health and safety, as well as economic, social and environmental impact is needed

¹ The US needs to spend 3% of GDP on infrastructure (~\$540B per annum) to address efficiency and structural safety issues, and bring our infrastructure back to internationally competitive standards. Based on current state and local contribution (~\$320B) and federal funding (~\$100B, 2.7% of total federal spending), the funding gap is approximately \$120B per annum, assuming the current level of federal spend.

² Road users pay ~48% of the total cost service, water customer revenues in California are only 80-85% of operating water utility costs, and transit user fees represent 27% of total transit spend.

³ Process challenges addressed in part by the 2015 Federal Permitting and Improvement Act and prior executive actions

to prioritize projects. The federal government could accelerate federally controlled projects like dams and locks without delay.

2. **Develop strategies to accelerate project delivery** by improving processes for regulatory approvals, permitting and contracting. (i) Pilot a “clean-sheet” fast-track process for priority projects, with streamlined approvals, key performance indicators for each step and time-bound decisions. (ii.) Undertake a comprehensive process re-design from the “ground-up,” built on lean practices, standardization, clear decision-making authority and performance management without sacrificing the environmental outcome.
3. **Elevate procurement** by bringing private-sector discipline and best practices to optimize major project delivery. For example, dynamic design-build bidding for the replacement to the Tappan Zee Bridge resulted in over \$1B in savings relative to initial estimates.
4. **Identify sustainable funding models and financing strategies.** There is \$85B+ in existing transportation related federal authority available to deploy immediately, as well as substantial opportunity to increase that capacity by expanding current grant programs (e.g. TIGER, FASTLANE), federal credit programs (such as TIFIA), and raising caps on Private Activity Bonds to expand public private partnerships (P3s). In parallel, sustainable funding streams should be identified, which could include increased user fees, tax code changes, or unlocking the value in government assets. The multipliers on these revenue sources can be substantial.⁴
5. **Build the infrastructure of tomorrow** by considering opportunities to integrate transformational new technologies and anticipating changing needs in building the infrastructure of the future.

To implement the aforementioned solutions, a **National Infrastructure Accelerator** could be created as part of the White House Office. This Accelerator would build on existing federal efforts to provide the leadership required to build our country’s most important projects faster and with more private capital than ever before. With an aligned vision and streamlined processes, our nation’s priority infrastructure projects can be approved and built in one-third the time and at 80% of the cost while also achieving better environmental outcomes. While increases in spending will be needed, the focus of the Accelerator will be on achieving better outcomes by creating incentives for better projects, faster decision-making, more cost-effective procurement practices and more innovative financing. Some immediate pilot projects could demonstrate the effectiveness of this plan and unleash creativity across the board.

III. POTENTIAL IMPACT AND PATH FORWARD

These efforts will change the trajectory of U.S. performance, economic growth and employment:

- ☐ **Enhance the performance and condition of our infrastructure:** Reduce congestion (e.g., less commute time) and provide high quality access to all (universal supply of safe drinking water and broadband). Deliver projects in 2-years, not 10-years, with enhanced environmental outcomes.
- ☐ **Strengthen economic growth and global competitiveness:** Remove the wasted unproductive time, re-capturing the \$160B+ per year in congestion costs and remove the trillions of dollars in costs from process delays
- ☐ **Put Americans Back to Work and Increasing Industrial Capacity.** Investment in infrastructure will put Americans back to work in sustainable, middle-class jobs with the support of robust training programs

⁴ For example, every \$1 of cost to the taxpayer under the TIFIA program alone can provide \$10 in loan value with up to \$30 of project value, or every \$1 in PABS funding in recent projects is matched with \$5 of additional project funding

To: Randall, Brenda[Randall.Brenda@epa.gov]; Jefferson, Gayle[Jefferson.Gayle@epa.gov]; Reeder, John[Reeder.John@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Snipes, Rebecca[snipes.rebecca@epa.gov]; Morina, Lenée[Morina.Lenee@epa.gov]
From: Konkus, John
Sent: Wed 3/1/2017 9:21:16 PM
Subject: RE: Parking Request

Yes. My desk phone is 202-564-2187 and my cell phone is **Personal Phone/Ex. 6**

From: Randall, Brenda
Sent: Wednesday, March 1, 2017 4:20 PM
To: Konkus, John <konkus.john@epa.gov>; Jefferson, Gayle <Jefferson.Gayle@epa.gov>; Reeder, John <Reeder.John@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>; Snipes, Rebecca <snipes.rebecca@epa.gov>; Morina, Lenée <Morina.Lenee@epa.gov>
Subject: RE: Parking Request

Hi John,

I am in the office at 6:00am in the morning, can I give you a call to discuss the next steps.
Thanks, Brenda

From: Konkus, John
Sent: Wednesday, March 01, 2017 4:16 PM
To: Jefferson, Gayle <Jefferson.Gayle@epa.gov>; Reeder, John <Reeder.John@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>; Snipes, Rebecca <snipes.rebecca@epa.gov>; Randall, Brenda <Randall.Brenda@epa.gov>; Morina, Lenée <Morina.Lenee@epa.gov>
Subject: RE: Parking Request

Thank you!

From: Jefferson, Gayle
Sent: Wednesday, March 1, 2017 4:04 PM

To: Reeder, John <Reeder.John@epa.gov>

Cc: Schnare, David <schnare.david@epa.gov>; Konkus, John <konkus.john@epa.gov>; Snipes, Rebecca <snipes.rebecca@epa.gov>; Randall, Brenda <Randall.Brenda@epa.gov>; Morina, Lenée <Morina.Lenee@epa.gov>

Subject: RE: Parking Request

That's great news John – thank you for reaching out.

Becky Snipes is the HQ Parking Program Manager, and I am copying her on this email; however, Becky is on vacation this week, so Brenda Randall, also copied on this email, will reach out to each of them, directly, to walk them through the next steps – she will be in touch right away so that they can begin parking quickly in the RRB Garage.

Thanks & let me know if you need anything further from me.

Regards-

Gayle

Gayle L. Jefferson

Acting Director

Facilities Management and Services Division (FMSSD)

OA/OARM/USEPA

Main Number: (202)564-2030

Direct Number: (202)564-1630

Cell Number: Personal Phone/Ex. 6

From: Reeder, John

Sent: Wednesday, March 01, 2017 3:25 PM

To: Jefferson, Gayle <Jefferson.Gayle@epa.gov>

Cc: Schnare, David <schnare.david@epa.gov>; Konkus, John <konkus.john@epa.gov>

Subject: Parking Request

Gayle,

David Schnare and John Konkus are approved for “special hours” subsidized parking.

Please can you advise us on the next steps to set this up?

Thank you.

JReeder

202 564 6082

To: Rees, Sarah[rees.sarah@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Dravis, Samantha
Sent: Mon 3/6/2017 7:06:26 PM
Subject: RE: Resending - EPA Request regarding Cholla

Great, I will email Ms. Cagle.

From: Rees, Sarah
Sent: Monday, March 6, 2017 1:28 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: RE: Resending - EPA Request regarding Cholla

Yes – this is one of the actions that we were cleared to send on Friday; it was sent to the Federal Register today.

From: Dravis, Samantha
Sent: Monday, March 06, 2017 12:18 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>
Subject: Re: Resending - EPA Request regarding Cholla

I thought we released this? Sarah can you confirm ?

Sent from my iPhone

On Mar 6, 2017, at 12:10 PM, Schnare, David <schnare.david@epa.gov> wrote:

Samantha and Sarah:

Can you see whether this is still frozen or is it on the list we have now decided to released? If it is heading out the door, can you send Ms. Cagle a note as to its status.

d.

From: molly.cagle@bakerbotts.com [mailto:molly.cagle@bakerbotts.com]
Sent: Monday, March 6, 2017 12:07 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: jeffrey.allmon@pinnaclewest.com
Subject: Resending - EPA Request regarding Cholla
Importance: High

David,

First, thank you for your work on the Transition Team. I can't imagine how long your days are. Second, thank you for agreeing to take a look at this matter related to the Cholla Power Plant ("Cholla") in northern Arizona. The January 20th regulatory freeze has resulted in a hold being placed on the final rule containing the Best Available Retrofit Technology ("BART") reassessment for the Cholla facility, and without that reassessment, the owners will have to shut Cholla down in December 2017. The final rule cannot take effect unless and until it is published in the Federal Register. When the reassessment takes effect, the owners will have certainty as to the viability of existing contracts for the purchase of coal and can operate Cholla for many more years to come. Under the circumstances, you can probably appreciate that the lingering uncertainty about the fate of the plant's BART reassessment is unnerving for the plant owners and its hundreds of employees. Given that EPA already has signed off on the environmental side of the Cholla BART reassessment, it seems clear that expeditiously allowing this rule to take effect is consistent with President Trump's repeated statements to preserve coal facilities and jobs in the USA.

Issue

On January 13, 2017, then U.S. EPA Administrator Gina McCarthy signed a final rule approving a source-specific SIP revision for the coal-fired Cholla plant near Winslow, Arizona (attached for reference). This action finalized a state BART determination for Cholla based upon a reassessment of

circumstances surrounding future operation of the plant in compliance with the Regional Haze Rule (i.e., the “Cholla BART Reassessment”). Without this reassessment, Cholla would be required to install selective catalytic reduction (“SCR”) controls on Units 3 and 4 on or before December 5, 2017 or cease operation, pursuant to a 2012 Regional Haze Federal Implementation Plan (“FIP”). At this time, the owners will NOT be able to install SCR controls at Cholla by the current deadline. Hence, if the 2017 Cholla BART Reassessment final rule is not allowed to take effect, this coal-fired facility will be required to close. In addition, further delays in formal publication of the 2017 final rule creates lingering regulatory uncertainty as to the future of the Cholla plant before the Arizona state utility commission.

Our Ask

Arizona Public Service Company (“APS”), (my client) as operating agent and co-owner of the Cholla facility, requests that U.S. EPA publish the 2017 federal rule, which approves the source- specific Regional Haze SIP for Cholla, in the Federal Register as soon as possible. Publication of the final rule is a necessary prerequisite for the rule to take effect.

Additional Facts

We are prepared to meet with you in DC or to set up a conference call to discuss the details of the Cholla BART reassessment, but the “sum up” version of the story is:

- Beginning in 2008, APS undertook a project to voluntarily reduce emissions of NO_x, SO₂ and PM at Cholla through the installation and upgrade of Low NO_x Burners (“LNB”), SO₂ scrubbers, and baghouses for PM. In 2011, the Arizona Department of Environmental Quality (“ADEQ”) proposed the approval of these voluntary pollution control measures as BART for Cholla.
- On December 5, 2012, EPA promulgated a final action approving in part and disapproving in part a Regional Haze SIP submitted by ADEQ containing the Department’s 2010 BART determination. See 77 Fed. Reg. 72,512 (Dec. 5, 2012). The Agency identified what it believed were significant flaws in the

way ADEQ identified BART for NO_x at Cholla. As such, EPA promulgated a FIP for Cholla imposing a far-lower NO_x emission limit (i.e., 0.055 lb/MMBTU)—which could only be achieved through installation of SCR controls—and required compliance by December 5, 2017.

- In order to avoid application of the 2012 EPA BART FIP for Cholla, which would have made continued operation of the plant uneconomical, Cholla's owners committed to the following specific actions:
 - o Permanently close Cholla Unit 2 by April 1, 2016 (which has already occurred);
 - o Operate existing pollution controls at the plant; and
 - o By April 30, 2025, permanently cease coal burning at all Cholla units, with the option to convert the units to natural gas later that year (subject to a 20% capacity factor).
- Based on a state reassessment of BART requirements for Cholla that relied upon these commitments, on October 22, 2015, ADEQ submitted a revision to the Arizona Regional Haze SIP intended to replace the 2012 BART FIP.
- On January 13, 2017, U.S. EPA published a final rule approving the Arizona Regional Haze SIP revisions that included the Cholla BART Reassessment and withdrawing the 2012 FIP.

I am attaching a copy of EPA's final Fact Sheet for the Cholla BART Reassessment, and the rule, which is ready for publication in the Federal Register so that it may take effect.

Please let me know what additional information you need, or if we should meet with you or others within the Agency to talk further about our circumstances.

Best,

Molly Cagle

Molly Cagle

Partner

Baker Botts L.L.P.

Molly.cagle@bakerbotts.com

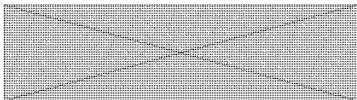
O +1.512.322.2535

M Personal Phone/Ex. 6

98 San Jacinto Blvd. #1500

Austin, Texas 78701

USA



<image002.png><image003.png><image004.png><image005.png><image006.png>

Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

<removed.txt>

<Cholla NFRM_prepublication version.docx>

<2017_0113 Cholla Final Action Fact Sheet.docx>

To: Schnare, David[schnare.david@epa.gov]
From: Bromberg, Kevin L.
Sent: Wed 3/8/2017 9:10:49 PM
Subject: RE: Schnare Files

Can I sell it on ebay?

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Wednesday, March 08, 2017 3:24 PM
To: Bromberg, Kevin L.
Subject: RE: Schnare Files

Priceless stuff no doubt. . .

From: Bromberg, Kevin L. [mailto:kevin.bromberg@sba.gov]
Sent: Wednesday, March 8, 2017 2:32 PM
To: Schnare, David <schnare.david@epa.gov>; Maresca, Charles A. <Charles.Maresca@sba.gov>
Subject: Schnare Files

Still have these on our S:/drive

S:/Old Files/Old Shared Folders/Schnare Files

Broken into Econ Roundtable Files, Practitioners Manual Files and SARA Files

As I recall = the Practitioners File is RFA Guidance for the Agencies

■ Kevin Bromberg

Assistant Chief Counsel for Environmental Policy

📍 SBA // Office of Advocacy

409 3rd St. SW, Washington, D.C. 20416

✉ kevin.bromberg@sba.gov 📞 202.481.2963

📠 202.205.6964



To: Grantham, Nancy[Grantham.Nancy@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]
From: Knapp, Kristien
Sent: Thur 3/9/2017 8:28:31 PM
Subject: Re: Midterm notice

I just handed the package to Loren directly. He said DOT is holding on to it, for signature in a couple days.

Sent from my iPhone

On Mar 9, 2017, at 2:50 PM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:

Yes .. we just got them and Kristien is on her way

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Schnare, David
Sent: Thursday, March 09, 2017 2:42 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Knapp, Kristien <Knapp.Kristien@epa.gov>
Subject: RE: Midterm notice

Do that as well.

d.

From: Grantham, Nancy
Sent: Thursday, March 9, 2017 2:41 PM
To: Knapp, Kristien <Knapp.Kristien@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: RE: Midterm notice

If come over here – we can call our contacts there. Thanks ng

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

From: Knapp, Kristien
Sent: Thursday, March 09, 2017 2:40 PM
To: Schnare, David <schnare.david@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: FW: Midterm notice

Autopen signature complete.

I'm now ready to get it to DOT. David, is there someone in particular I should get in touch with?

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Schnare, David[schnare.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Konkus, John
Sent: Tue 3/7/2017 3:48:59 PM
Subject: RE: Draft Talking Points
EPA Infrastructure Talking Points.docx

Absolutely the need is the pointy end of the spear and is driven home by media stories about Flint and East Chicago and cities in FL and TX that tell us they have immediate needs.

The states are telling us they need over \$700B in new or improved water infrastructure over the next 25 years.

I've updated the talking points memo (attached) to try and draw this out some more.

From: Jackson, Ryan
Sent: Tuesday, March 7, 2017 10:33 AM
To: Konkus, John <konkus.john@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Schnare, David <schnare.david@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: Re: Draft Talking Points

Deliberative Process Privilege/Ex. 5

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

On Mar 7, 2017, at 9:24 AM, Konkus, John <konkus.john@epa.gov> wrote:

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

I can make these the last points on the card.

From: Jackson, Ryan
Sent: Tuesday, March 7, 2017 9:56 AM
To: Konkus, John <konkus.john@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Schnare, David <schnare.david@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: Re: Draft Talking Points

Deliberative Process Privilege/Ex. 5

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

On Mar 6, 2017, at 4:29 PM, Konkus, John <konkus.john@epa.gov> wrote:

Draft talking points in both pocket card and memo format attached.

Thank you,

John Konkus

From: Jackson, Ryan

Sent: Monday, March 6, 2017 1:27 PM

To: Dravis, Samantha <dravis.samantha@epa.gov>; Schnare, David <schnare.david@epa.gov>; Konkus, John <konkus.john@epa.gov>; Brown, Byron <brown.byron@epa.gov>

Subject: Fwd: Pruitt

John, we'll need talking points in this. SRF, WIFIA, stories, need. That type of thing.

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

Begin forwarded message:

From: "Gunn, Ashley L. EOP/WHO"

EOP/Ex. 6

Date: March 6, 2017 at 11:10:14 AM MST

To: "Jackson, Ryan" <jackson.ryan@epa.gov>

Cc: "Murphy, Christine M. EOP/WHO"

EOP/Ex. 6

"Hale, Michelle" <hale.michelle@epa.gov>

Subject: Re: Pruitt

Shd be coming out tonight or in the am. Will forward asap!

Thank you,
Ashley Gunn
Senior Director
Cabinet Affairs
The White House

Personal Phone/Ex. 6

Please excuse typos. Sent from my iPhone

On Mar 6, 2017, at 1:05 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Yes for sure. Do you have more info on it attendees, and the itinerary yet?

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

On Mar 6, 2017, at 10:42 AM, Gunn, Ashley L. EOP/WHO

EOP/Ex. 6

wrote:

And is he aware/confirmed for the Wed Infrastructure meeting? There is first a working meeting from 9-12:30 in EEOB, followed by 12:30-1:30 lunch with POTUS in Roosevelt Room.

-----Original Message-----

From: Jackson, Ryan [<mailto:jackson.ryan@epa.gov>]

Sent: Monday, March 6, 2017 11:24 AM

To: Gunn, Ashley L. EOP/WHO <Ashley.L.Gunn@who.eop.gov>

Subject: Pruitt

Ashley, I'm sorry for the late notice but the Administrator is speaking to the National Association of Manufacturers today in Scottsdale at their board meeting. He'll be back in Washington tomorrow. He's planning to speak Thursday afternoon at CERA Week in Houston.

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

<EPA Infrastructure Talking Points.docx>

<WH Infrastructure Speech Card.docx>

EPA Water Infrastructure Investment Talking Points

Our nation's water infrastructure is in desperate need of funding.

Based on EPA's most recent surveys undertaken collaboratively with states, over \$739 billion is needed for drinking water and wastewater infrastructure improvements over the next five to twenty years.

From the *Harvard Political Review* (2/28/17) article: Water: The Underlying Infrastructure Crisis

"The first things that come to mind at the word 'infrastructure' are roads and bridges. But access to clean water is one of the most important infrastructural resources needed to sustain human life and develop large population centers."

"...a significant structural water crisis pervades throughout the United States."

"In the United States, lead water pipes are polluting the drinking water that millions of Americans use. Data from the Environmental Protection Agency indicates that only nine states had safe levels of lead in their water supply from 2012 to 2015. Overall, 18 million Americans live in areas that fail to meet this standard either because their water systems contain levels of lead above the safety threshold or they live in municipalities that fail to adequately test their water systems for lead contamination. On the more extreme end, there are eight water systems in seven different states and territories with lead levels above 1,000 parts per billion; as well as 25 water systems with lead levels above 200 ppb—well above the 15ppb threshold of safe lead levels."

"While concerns about our roads are certainly valid, political leaders shouldn't forget about the need to revitalize, and in some cases create the infrastructure necessary to give people access to our most fundamental resource: water."

Torn From The Headlines

Time Magazine (1/17/17): Flint's Water Crisis Still Isn't Over

"A year ago, Flint, Mich., was engulfed in crisis. After officials belatedly acknowledged that the city's water supply had been contaminated with lead and had poisoned local children, both Michigan and the federal government declared a state of emergency. Furious residents questioned what government officials knew about the dangers of the drinking water and why they didn't act sooner."

"Flint's residents still can't drink the water without a filter, requiring most families to rely on bottled water for everything from brushing their teeth to cooking and bathing. More than a dozen state and local officials have been criminally charged over Flint's poisoned water, including two former emergency managers who could face decades in prison if convicted, while the state's attorney general tells TIME that the investigation is not yet over."

The International Business Times (3/13/17): The Next Flint? Lead Found in Water In East Chicago, Indiana

"Three years after the water contamination crisis in Flint, Michigan made headlines across the

United States, a small city in Indiana has experienced a similar problem with toxic levels of lead in its water supply. Soil testing in East Chicago, Indiana revealed high levels of the heavy metal toxin in the tap water supplied to its 29,000 residents.”

EPA Has the Tools and the Expertise to Help

EPA has several mechanisms for funding water infrastructure including WIFIA and the State Revolving Funds.

States, cities, utilities, Members of Congress and the private sector would voice significant support for increased funding of water infrastructure.

EPA should be centrally involved in any infrastructure program because the agency is uniquely positioned to fund projects and has the connections with relevant stakeholders.

Mechanisms for Funding Infrastructure

Clean Water State Revolving Funds (SRF)

The Clean Water State Revolving Fund (CWSRF) program is a federal-state partnership that provides communities a permanent, independent source of low-cost financing for a wide range of water quality infrastructure projects.

Using a combination of federal and state funds, state CWSRF programs provide loans to eligible recipients to:

- construct municipal wastewater facilities,
- control nonpoint sources of pollution,
- build decentralized wastewater treatment systems,
- create green infrastructure projects,
- protect estuaries, and
- fund other water quality projects

Based on established estimation methods, water and wastewater infrastructure investments may provide between 13,000 to 24,000 jobs per \$1 billion in federal funding.

SRF has \$150B in available funding = 3.6M potential jobs.

SRF Success Stories

The Texas Water Development Board has provided more than \$300 million to over 28 projects using its CWSRF to fund a diversified portfolio of water reclamation, reuse and supply development solutions to augment community resiliency in the face of severe drought events throughout the state.

The Hood River Farmers Irrigation District (Oregon) used \$36.2 million in CWSRF loans for a multiple-year endeavor to convert the open canal system to a piped, pressurized irrigation system to maximize water conservation and restore reliable water delivery to crops.

The City of Lenexa, Kansas used CWSRF ARRA funds to construct the Central Green Streamway, an innovative stormwater management solution that protects water quality while providing

recreational and educational opportunities for residents.

Examples of Water Infrastructure Needs

There's a \$200 million project in Cape Coral, FL that will replace inadequate septic systems with centralized wastewater treatment, provide access to a new drinking water source and support a reclaimed water irrigation project, thereby protecting public health and a fragile ecosystem, and supporting water conservation.

Another project, in East Chicago, Indiana will need \$40 million to support replacement of lead service lines, protecting children's health in an economically disadvantaged community.

The city of Houston, Texas will need \$60 Million to support extensive repair and replacement of pipes in its sanitary sewer collection system, protecting public health by reducing sewage overflows.

Water Infrastructure Finance and Innovation Act (WIFIA)

The WIFIA program accelerates investment in our nation's water infrastructure by providing long-term, low-cost loans to projects of national and regional significance.

WIFIA works separately from, but in coordination with, the State Revolving Fund (SRF) programs to provide subsidized financing for large dollar-value projects.

Because of its low cost and structuring flexibilities, WIFIA has the potential to attract private investment and help communities address the need for increased finance of water infrastructure.

EPA estimates that through WIFIA, each dollar in federal funds can stimulate approximately \$100 in total infrastructure spending.

EPA announced the availability of funds in January 2017 and we are currently asking for letters of interest.

To: Schnare, David[schnare.david@epa.gov]
From: Matthew Martini
Sent: Tue 3/14/2017 4:07:45 PM
Subject: Briefing On EPA Energy & Environmental Policy

David,

JP Morgan is hosting a trip to DC for folks who are focused on energy. In particular, this group is focused on the impact of current and future U.S. Energy policy on oil and gas both domestically and internationally. They are meeting with members of Congress and committee staff to discuss these matters.

Please, let me know if someone at EPA is available to attend to provide a briefing on the direction of EPA.

Key areas of discussion:

- U.S. policy on domestic energy
- Border Adjustment Tax (BAT)
- Renewable Fuels Standards
- Environmental Policy, including Climate Change
- Foreign Trade
- Geopolitics' influence on commodity prices

They have secured a meeting space at the St. Regis hotel so they do have the ability to host meetings if necessary.

Event: J.P. Morgan Washington D.C. Energy Policy Trip

When: Monday, March 20 & Tuesday, March 21, 2017

Where: Washington, DC

Thank you,
Matt

To: Schnare, David[schnare.david@epa.gov]
Cc: Grantham, Nancy[Grantham.Nancy@epa.gov]
From: Knapp, Kristien
Sent: Mon 3/13/2017 5:38:37 PM
Subject: Re: mte notice

I just forwarded to Nancy.

Sent from my iPhone

> On Mar 13, 2017, at 1:35 PM, Schnare, David <schnare.david@epa.gov> wrote:
>
> Kristen
> Loren needs the word version, also asap. Who has that?
>
> Sent from my iPhone
>
>> On Mar 13, 2017, at 1:26 PM, Knapp, Kristien <Knapp.Kristien@epa.gov> wrote:
>>
>> Just handed to Loren.
>>
>> Sent from my iPhone
>>
>>> On Mar 13, 2017, at 1:21 PM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:
>>>
>>> Thx
>>>
>>> Sent from my iPhone
>>>
>>>> On Mar 13, 2017, at 1:14 PM, Knapp, Kristien <Knapp.Kristien@epa.gov> wrote:
>>>>
>>>> I'm in a taxi now en route to DOT.
>>>>
>>>> Sent from my iPhone
>>>>
>>>> Begin forwarded message:
>>>>
>>>> From: <DC-WJCN-3312-M@epa.gov<mailto:DC-WJCN-3312-M@epa.gov>>
>>>> Date: March 13, 2017 at 1:15:50 PM EDT
>>>> To: <knapp.kristien@epa.gov<mailto:knapp.kristien@epa.gov>>
>>>>
>>>> <image2017-03-13-131549.pdf>

To: Konkus, John[konkus.john@epa.gov]; Jefferson, Gayle[Jefferson.Gayle@epa.gov]; Reeder, John[Reeder.John@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Snipes, Rebecca[snipes.rebecca@epa.gov]; Morina, Lenee[Morina.Lenee@epa.gov]
From: Randall, Brenda
Sent: Wed 3/1/2017 9:19:56 PM
Subject: RE: Parking Request

Hi John,

I am in the office at 6:00am in the morning, can I give you a call to discuss the next steps.
Thanks, Brenda

From: Konkus, John
Sent: Wednesday, March 01, 2017 4:16 PM
To: Jefferson, Gayle <Jefferson.Gayle@epa.gov>; Reeder, John <Reeder.John@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>; Snipes, Rebecca <snipes.rebecca@epa.gov>; Randall, Brenda <Randall.Brenda@epa.gov>; Morina, Lenee <Morina.Lenee@epa.gov>
Subject: RE: Parking Request

Thank you!

From: Jefferson, Gayle
Sent: Wednesday, March 1, 2017 4:04 PM
To: Reeder, John <Reeder.John@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>; Konkus, John <konkus.john@epa.gov>; Snipes, Rebecca <snipes.rebecca@epa.gov>; Randall, Brenda <Randall.Brenda@epa.gov>; Morina, Lenee <Morina.Lenee@epa.gov>
Subject: RE: Parking Request

That's great news John – thank you for reaching out.

Becky Snipes is the HQ Parking Program Manager, and I am copying her on this email; however, Becky is on vacation this week, so Brenda Randall, also copied on this email, will reach out to each of them, directly, to walk them through the next steps – she will be in touch right away so that they can begin parking quickly in the RRB Garage.

Thanks & let me know if you need anything further from me.

Regards-

Gayle

Gayle L. Jefferson

Acting Director

Facilities Management and Services Division (FMSD)

OA/OARM/USEPA

Main Number: (202)564-2030

Direct Number: (202)564-1630

Cell Number: { **Personal Phone/Ex. 6** }

From: Reeder, John

Sent: Wednesday, March 01, 2017 3:25 PM

To: Jefferson, Gayle <Jefferson.Gayle@epa.gov>

Cc: Schnare, David <schnare.david@epa.gov>; Konkus, John <konkus.john@epa.gov>

Subject: Parking Request

Gayle,

David Schnare and John Konkus are approved for “special hours” subsidized parking.

Please can you advise us on the next steps to set this up?

Thank you.

JReeder

202 564 6082

Cc: Willis, Sharnett[Willis.Sharnett@epa.gov]
To: Schnare, David[schnare.david@epa.gov]
From: Marlae Schnare
Sent: Mon 3/6/2017 6:57:38 PM
Subject: Re: Contact information

Thank you. Sharnett, you should have my work email as well:

marlae.schnare@fairfaxcounty.gov

-Marlae

On Mar 6, 2017, at 1:12 PM, Schnare, David <schnare.david@epa.gov> wrote:

Still didn't get the email right. Is now.

Subject: Contact information

Marlae,

If you need to contact me, Sharnett either knows where I or can find me. Here are the phone numbers:

Marlae -
Sharnett

Personal Phone/Ex. 6

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: Smith, Loren (OST)
Sent: Wed 3/8/2017 8:29:48 PM
Subject: RE: Dave/all - re CAFE - here is DOT's final draft

Received – thank you.

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Wednesday, March 08, 2017 3:19 PM
To: Smith, Loren (OST); Jackson, Ryan; McCown, Brigham (OST); Pugliese, Anthony (OST); Ja'Ron Smith; Michael Catanzaro; John.S.Moran [Deliberative Process Privilege/Ex. 5]; Fulton, Finch (OST)
Subject: RE: Dave/all - re CAFE - here is DOT's final draft

Folks:

Please find attached the Final Final FR Notice. The only thing that needs to be put into place is the date which is immediately above the signature box.

I am sending this to our folks to get a signature now. I will send you a copy of the signed version as soon as I get one.

David W. Schnare

Assistant Deputy Administrator

US EPA

From: Smith, Loren (OST) [mailto:Loren.Smith@dot.gov]
Sent: Wednesday, March 8, 2017 11:14 AM
To: Schnare, David <schnare.david@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; McCown, Brigham (OST) <brigham.mccown@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; Ja'Ron Smith <[Redacted] EOP/Ex. 6 [Redacted] Michael Catanzaro <[Redacted] EOP/Ex. 6 [Redacted]>; John.S.Moran [Deliberative Process Privilege/Ex. 5]; Fulton, Finch (OST) <Finch.Fulton@dot.gov>
Subject: Dave/all - re CAFE - here is DOT's final draft

As yet unsigned - need EPA to insert contact info and remove your original draft label. Presume next step is for your team to review and submit for Administrator Pruitt's signature, then back to DOT.

Please let me know that you've received and your vision of plan forward.

+++

Loren Smith

U.S. Department of Transportation

West Building – W85-115

loren.smith@dot.gov

202-430-2952

To: Schnare, David[schnare.david@epa.gov]
From: Hope, Brian
Sent: Mon 3/13/2017 1:56:08 AM
Subject: FW: Opportunities to cut costs at the Duluth, MN EPA office

From: Dennis Hansen [mailto:dlhansen@d.umn.edu]
Sent: Saturday, March 11, 2017 11:11 AM
To: pruit.scott@epamail.epa.gov
Subject: Opportunities to cut costs at the Duluth, MN EPA office

Dear Mr. Pruitt,

I am a pro-business environmental scientist and I would like to offer my experience to help reduce costs at the EPA office in Duluth, MN.

Most of my career has been in the private scientific industry and I have also worked as a contractor at the US EPA office in Duluth.

While at the Duluth office, I noticed several opportunities to increase efficiency and reduce costs. Here are two examples: First, recognizing and eliminating redundant studies that other state and federal agencies were conducting and the 2nd: recognizing and halting studies that were simply attempts for researchers to redefine and reinvent regulations, just to create more work for themselves.

I could help implement these and other improvements, that would still allow the EPA to accomplish the PR friendly goals that Americans view as worthwhile and reduce taxpayer cost.

Please let me know if I can speak with a member of your team regarding opportunities to save tax payer money and enhance PR at the Duluth, MN EPA office.

Thank you for your time,

Dennis

Dennis L. Hansen M.Sc.

Aquatic Microbial Ecologist

Personal Phone/Ex. 6

dlhansen@d.umn.edu

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: David Schnare
Sent: Tue 3/14/2017 4:05:58 PM
Subject: Energy EO - Affected rules
Results list for 40 C.F.R. and greenhouse gas .docx

Ryan,

Among other things, we have to find all the rules and guidances associated with energy and greenhouse gas regulation. I have prepared a directive to get that started (actually there are a few such directives needed and I'm working on updating all of them). I've attached a list of rules that should be on the list we have to prepare. We can use it to help guide the staff or we can hold it in reserve in order to see how completely they respond to the Administrator's directive.

I'll next try to identify the guidances, etc. that would apply.

dschnare

--

David W. Schnare, Esq. Ph.D.

Results for: ("40 C.F.R." and greenhouse gas)

Administrative Codes and Regulations

1. 40 CFR 1508.25

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 1508.25 Scope.

... 4321 et seq., by, inter alia, adequately considering **greenhouse gas** emissions, not irrationally omitting consideration of "ultra-fine" airborne particulates, and ...

... 4321 et seq., by, inter alia, adequately considering **greenhouse gas** emissions, not irrationally omitting consideration of "ultra-fine" airborne particulates, and ...

... of no significant impact or an environmental impact statement. **40 C.F.R.** . § 1508.9 . If the agency determines that an environmental ...

... they are "connected actions," "cumulative actions," or "similar actions." **40 C.F.R.** . § 1508.25 . "Connected actions" are those which (i) automatically ...

... to assess adequately the combined impacts of similar actions. **40 C.F.R.** . § 1508.25(a)(3) . Go To Headnote D'agnillo v. United ...

... are "similar" may be analyzed in the same statement. **40 C.F.R.** . § 1508.25(a) . Go To Headnote N. Plains Res. ...

... of what agency or person undertakes such other actions. **40 C.F.R.** . § 1508.7 . NEPA requires that the EIS analyze the ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

2. 40 CFR 1502.14

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 1502.14 Alternatives including the proposed action.

... 4321 et seq., by, inter alia, adequately considering **greenhouse gas** emissions, not irrationally omitting consideration of "ultra-fine" airborne particulates, and ...

... 4321 et seq., by, inter alia, adequately considering **greenhouse gas** emissions, not irrationally omitting consideration of "ultra-fine" airborne particulates, and ...

... 4321 et seq., by, inter alia, adequately considering **greenhouse gas** emissions, not irrationally omitting consideration of "ultra-fine" airborne particulates, and ...

... may mitigate the adverse impacts of a proposed project, **40 C.F.R.** . §§ 1502.14(f) , 1502.16(h) . Go To Headnote ...

... briefly discuss the reasons for their having been eliminated. **40 C.F.R.** . § 1502.14(a) . Go To Headnote N.C. Alliance for ...

... (2)(E). Agencies must consider alternatives in an environmental assessment. **40 C.F.R.** § 1508.9(b) . The alternatives analysis is central to an environmental analysis. **40 C.F.R.** § 1502.14...

... abbreviated EIS, must contain an alternatives analysis as well. **40 C.F.R.** . §§ 1500.2(e) , 1508.9 . Go To Headnote ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

3. 40 CFR 52.21

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 52.21 Prevention of significant deterioration of air quality.

... mass amount of emissions (tpy), for each of the six **greenhouse gases** in the pollutant GHGs, by the **gas** 's associated global warming potential published at Table A-1 to subpart ...

... paragraph, prior to July 21, 2014, the mass of the **greenhouse gas** carbon dioxide shall not include

carbon dioxide emissions resulting from ...

... and biodegradable organic fractions of industrial and municipal wastes, including **gases** and liquids recovered from the decomposition of non-fossilized and biodegradable ...

... resultant value from paragraph (b)(49)(ii)(a) of this section for each **gas** to compute a tpy CO₂e....

... pollutant released from the regulated activity. Except that: (i) **Greenhouse gases** (GHGs), the air pollutant defined in § 86.1818-12(a) of this chapter as the aggregate group of six **greenhouse gases** : Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, ...

... For a GHG-only source, the only available PAL pollutant is **greenhouse gases** . (xi) Significant emissions unit means an emissions unit that ...

... 307-101-2 did not require best available control technology analysis for **greenhouse gases** , but integrated gasification combine cycle technology should have been considered ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

4. 40 CFR 1508.7

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 1508.7 Cumulative impact.

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... actions. 40 C.F.R. § 1508.7 . The impact of **greenhouse gas** emissions on climate change is precisely the kind of cumulative ...

... federal or non-federal, or person undertakes such other actions. **40 C.F.R. § 1508.7** . **40 C.F.R. § 1508.25** requires that agencies take cumulative impacts into ...

... analyze the cumulative impacts from reasonably foreseeable future actions. **40 C.F.R. § 1508.7** . Go To Headnote Earth Island Inst. ...

... significant actions taking place over a period of time. **40 C.F.R. § 1508.7** . Go To Headnote Selkirk Conservation Alliance ...

... the environmental impacts of the proposed action and alternatives, **40 C.F.R. § 1508.9(b)** , including "cumulative impact," **40 C.F.R. § 1508.7 -8**. Cumulative impact refers to the impact on ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

5. 40 CFR 1502.9

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 1502.9 Draft, final, and supplemental statements.

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... and bearing on the proposed action or its impacts. **40 C.F.R. § 1502.9(c)(1)** . Go To Headnote Ctr. for Biological ...

... and bearing on the proposed action or its impacts. **40 C.F.R. § 1502.9(c)(1)(i)** , (ii). Go To Headnote Greenpeace Usa ...

... and bearing on the proposed action or its impacts. **40 C.F.R. § 1502.9(c)(1)** . If there remains major federal action to ...

... proposal results from a study process required by statute. **40 C.F.R. § 1506.8(b)(2)(ii)** . An LEIS resulting from a study process ...

... and bearing on the proposed action or its impacts. **40 C.F.R. § 1502.9(c)(1)** . Go To Headnote Wyoming v. United ...

40 C.F.R. § 1502.9(c)(1)(i) , or when there are significant new circumstances ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

6. 40 CFR 1500.1

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 1500.1 Purpose.

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... before decisions are made and before actions are taken. **40 C.F.R.** . 1500.1(b) . Accurate scientific analysis, expert agency comments, and public ...

... not be significant, then an EIS is not necessary. **40 C.F.R.** . § 1508.13 . Thus, at the conclusion of the EA, ...

... Environmental Policy Act (NEPA) by federal agencies. **40 C.F.R.** . § 1500.1 et seq. The CEQ regulations provide that ...

... federal agencies. 42 U.S.C.S. §§ 4342, 4344(3); **40 C.F.R.** . §§ 1501 -08 (1998). Every federal agency then drafts its ...

... the public, to the extent practicable, in preparing assessments, **40 C.F.R.** . § 1501.4(b) , a duty that includes making diligent efforts ...

... Facilitate preparation of a statement when one is necessary. **40 C.F.R.** . § 1508.9(a) . If a significant impact is indicated, an ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

7. 40 CFR 1508.8

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 1508.8 Effects.

... have rejected selected highway route but for error. • Under **40 C.F.R.** . pt. 1508.8, "indirect effects" are those effects that are caused ...

... on air and water and other natural systems, including ecosystems. **40 C.F.R.** . pt. 1508. Go To Headnote Sierra Club v. Clinton, ...

... However, it does not expressly refer to climate change or **greenhouse gas** emissions. Go To Headnote Highway J Citizens Group, U.A. ...

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... agency must consider the cumulative effects of the project. **40 C.F.R.** . § 1508.8 (effects defined to include cumulative effects). The ...

40 C.F.R. . §§ 1508.8 , § 1508.27(b) . If the agency ...

... no further evaluation of the environmental effects is required. **40 C.F.R.** §§ 1508.9...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

8. 40 CFR 1508.18

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 1508.18 Major Federal action.

... had an impact on the domestic environment regarding emission of **greenhouse gases**. • Under the National Environmental Policy Act...

... specific project, whether by permit or other regulatory decision. **40 C.F.R.** . § 1508.18 . A major federal action may encompass action ...

... decision as well as federal and federally assisted activities. **40 C.F.R.** . § 1508.18 . Thus, the need for an Environmental Impact ...

... to implement a specific statutory program or executive directive. **40 C.F.R.** . § 1508.18(b)(3) . The regulations also set forth circumstances under ...

... which are potentially subject to federal control and responsibility. **40 C.F.R.** . § 1508.18 (1991) . Go To Headnote Riverfront Garden ...

... Policy Act (NEPA) include both specific projects, **40 C.F.R.** . § 1508.18(b)(4) , and the adoption of programs, such as ...

... decision as well as federal and federally assisted activities. **40 C.F.R.** . § 1508.18(b)(4) . These regulations are entitled to substantial deference. ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

9. 40 CFR 51.166

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 51.166 Prevention of significant deterioration of air quality.

... pollutant released from the regulated activity. Except that: (i) **Greenhouse gases** (GHGs), the air pollutant defined in § 86.1818-12(a) of this chapter as the aggregate group of six **greenhouse gases** : Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, ...

... mass amount of emissions (tpy), for each of the six **greenhouse gases** in the pollutant GHGs, by the **gas** 's associated global warming potential published at Table A-1 to subpart ...

... (b)(48)(ii)(a), prior to July 21, 2014, the mass of the **greenhouse gas** carbon dioxide shall not include carbon dioxide emissions resulting from ...

... and biodegradable organic fractions of industrial and municipal wastes, including **gases** and liquids recovered from the decomposition of non-fossilized and biodegradable ...

... resultant value from paragraph (b)(48)(ii)(a) of this section for each **gas** to compute a tpy CO₂e...

... requires adherence to any permit issued under such program. **40 C.F.R.** . § 51.166(b)(17) . Go To Headnote Ohio v. United ...

... increases and decreases in actual emissions at the source. **40 C.F.R.** . § 51.166(b)(3) . "Actual emissions" were defined to equal the ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

10. 40 CFR 1502.16

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 1502.16 Environmental consequences.

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... However, it does not expressly refer to climate change or **greenhouse gas** emissions. Go To Headnote Rock Creek Alliance v. United ...

... environmental impacts. See 42 U.S.C.S. § 4332 (C)(ii); **40 C.F.R.** . §§ 1502.14(f) , 1502.16(h) , 1508.14 , ...

... foreseeable project impacts regardless of whether they are intentional. **40 C.F.R.** . §§ 1502.16(b) , 1508.8(b) . Go To Headnote ...

... must be included in the Environmental Impact Statement (EIS). **40 C.F.R.** . § 1500 , et seq. These regulations mandate that the ...

... the direct and indirect effects of a proposed project. **40 C.F.R.** . § 1502.16 . Indirect effects, or secondary impacts, are those ...

... the proposed action. 42 U.S.C.S. § 4332 (2)(C); **40 C.F.R.** . §§ 1502.1 , 1502.14 , 1502.16 . The ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

11. 40 CFR 1505.2

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 1505.2 Record of decision in cases requiring environmental impact statements.

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... been adopted, and if not, why they were not. **40 C.F.R.** . § 1505.2 . Go To Headnote Governments : Federal ...

... even a specific proposal, going into the EIS process. **40 C.F.R.** . §§ 1502.2(g) , 1502.4(a) . An agency's

decision may ...

... based on the Environmental Impact Statement record it develops. **40 C.F.R.** § 1505.2 . Injunctions are required to be narrowly tailored. ...

... a decision, it must publish a Record of Decision. **40 C.F.R.** § 1505.2 (2004) . Only then may an agency finalize its action. **40 C.F.R.** § 1506.1(a) (2004) . Go To Headnote...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

12. 40 CFR 1502.13

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 1502.13 Purpose and need.

... 4321 et seq., by, inter alia, adequately considering **greenhouse gas** emissions, not irrationally omitting consideration of "ultra-fine" airborne particulates, and ...

... 4321 et seq., by, inter alia, adequately considering **greenhouse gas** emissions, not irrationally omitting consideration of "ultra-fine" airborne particulates, and ...

... responding in proposing the alternatives including the proposed action. **40 C.F.R.** §§ 1502.10(d) , 1502.13 . Agencies are afforded considerable, ...

... EIS, that the two projects were not "connected" under **40 C.F.R.** § 1508.25(a)(1) . • National Environmental Policy Act , ...

... responding in proposing the alternatives including the proposed action. **40 C.F.R.** § 1502.13 . The stated goal of a project necessarily ...

... responding in proposing the alternatives including the proposed action. **40 C.F.R.** § 1502.13 . Agencies enjoy considerable discretion in defining the ...

... in proposing the alternatives included in the proposed action. **40 C.F.R.** § 1502.13 . Courts must uphold an agency's stated objective ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

13. 40 CFR 1508.23

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 1508.23 Proposal.

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... that goal and the effect can be meaningfully evaluated. **40 C.F.R.** § 1508.23 . An Environmental Impact Statement, and by extension ...

... that goal and the effects can be meaningfully evaluated. **40 C.F.R.** § 1508.23 . Go To Headnote Thomas v. Peterson, ...

... the environment. • "Cumulative actions" may include "proposed actions." **40 C.F.R.** § 1508.25(a)(2) . A proposal exists at that stage in ...

... environmental impact statement on a proposal should be timed (**40 C.F.R.** § 1502.5) so that the final statement may be ...

... which are potentially subject to federal control and responsibility. **40 C.F.R.** § 1508.18 . The regulations also provide that a proposal ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

14. 40 CFR 1506.10

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 1506.10 Timing of agency action.

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... adopted all proposed practicable means to minimize environmental impact. **40 C.F.R.** § 1505.2 . During the process under the National Environmental ...

... prepare a Record of Decision justifying its ultimate decision. **40 C.F.R.** §§ 1505.2 , 1506.10(b) . Go To Headnote ...

... statement (FEIS), which is published in the Federal Register. **40 C.F.R.** §§ 1503.4 , 1506.10(b) . The FEIS is followed ...

... statement, which are then published in the Federal Register. **40 C.F.R.** §§ 1506.9 -. 10. An agency must wait at least ...

... minimum of only 45 days required for public comment. **40 C.F.R.** § 1506.10(c) . Whether still more time might have been ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

15. 40 CFR 50

TITLE 40 -- PROTECTION OF ENVIRONMENT Part 50 Note

... agencies under the Clean Air Act for failing to control **greenhouse gas** emissions; the groups did not establish causality between the failure ...

... particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead. **40 C.F.R.** § 50 . The EPA has not established NAAQS for **greenhouse gases** . Go To Headnote N.C. Ex Rel. Cooper v. Tva, ...

... schematic diagrams for measuring emissions levels and air quality, **40 C.F.R.** § 50 , apps. A-R, to ensure that measurements will ...

40 C.F.R. § 50.9 . The ozone standard was revised in 1997 ...

... 0.08 parts per million measured over an eight-hour period. **40 C.F.R.** § 50.10...

40 C.F.R. § 50.9 . The ozone standard was revised in 1997 ...

... 0.08 parts per million measured over an eight-hour period. **40 C.F.R.** § 50.10...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

16. 40 CFR 70.2

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 70.2 Definitions.

... **Greenhouse gases** (GHGs), the air pollutant defined in § 86.1818-12(a) of this chapter as the aggregate group of six **greenhouse gases** : carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, ...

... mass amount of emissions (tpy), for each of the six **greenhouse gases** in the pollutant GHGs, by the **gas** 's associated global warming potential published at Table A-1 to subpart ...

... paragraph, prior to July 21, 2014, the mass of the **greenhouse gas** carbon dioxide shall not include carbon dioxide emissions resulting from ...

... and biodegradable organic fractions of industrial and municipal wastes, including **gases** and liquids recovered from the decomposition of non-fossilized and biodegradable ...

... pollutant released from the regulated activity. Except that: (1) **Greenhouse gases** (GHGs), the air pollutant defined in § 86.1818-12(a) of this chapter as the aggregate group of six **greenhouse gases** : carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, ...

... mass amount of emissions (tpy), for each of the six **greenhouse gases** in the pollutant GHGs, by the **gas** 's associated global warming potential published at Table A-1 to subpart ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

17. 40 CFR 86.1803-01

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 86.1803-01 Definitions.

... passenger vehicle" (MDPV) means any heavy-duty vehicle (as defined in **40 C.F.R.** . pt. 86, subpt. S.) with a gross vehicle weight rating ...

... vehicle which (1) is an incomplete truck as defined in **40 C.F.R.** . pt. 86, subpt. S, (2) has a seating capacity of ...

... an open cargo area for purposes of this definition. **40 C.F.R.** . § 86.1803-01 . The Environmental Protection Agency defines "heavy-duty vehicle" ...

... passenger vehicle" (MDPV) means any heavy-duty vehicle (as defined in **40 C.F.R.** . pt. 86, subpt. S.) with a gross vehicle weight rating ...

... vehicle which (1) is an incomplete truck as defined in **40 C.F.R.** . pt. 86, subpt. S, (2) has a seating capacity of ...

... an open cargo area for purposes of this definition. **40 C.F.R.** . § 86.1803-01 . The Environmental Protection Agency defines "heavy-duty vehicle" ...

... passenger vehicle" (MDPV) means any heavy-duty vehicle (as defined in **40 C.F.R.** . pt. 86, subpt. S.) with a gross vehicle weight rating ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

18. 23 CFR 771.127

TITLE 23 -- HIGHWAYS, § 771.127 Record of decision.

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... environmental impact statement (FEIS) with the Environmental Protection Agency. **40 C.F.R.** . § 1506.10(b)(2) ; 23 C.F.R. § 771.127(a) . This ...

... environmental harm from the alternative selected have been adopted. **40 C.F.R.** . § 1505.2 . Under federal regulations, the record of decision ...

... briefly discuss the reasons for their having been eliminated. **40 C.F.R.** . § 1502.14(a) . The Bureau then must publish a record ...

... environmental harm from the alternative selected have been adopted. **40 C.F.R.** . § 1505.2 . Under federal regulations, the record of decision ...

... briefly discuss the reasons for their having been eliminated. **40 C.F.R.** . § 1502.14(a) . The Bureau then must publish a record ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

19. 40 CFR 600.302-12

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 600.302-12 Fuel economy label--general provisions.

... The heading, "Fuel Economy and **Greenhouse Gas** Rating (tailpipe only)" in the top left corner of the ...

... of the field to characterize the vehicle's fuel economy and **greenhouse gas** ratings, as determined in § 600.311. Position a box with ...

... the vehicle's fuel economy rating inside the box. If the **greenhouse gas** rating from § 600.311 is different than the fuel economy ...

... below the slider bar positioned to show where that vehicle's **greenhouse gas** rating falls relative to the total range; include the vehicle's **greenhouse gas** rating inside the box. Include the expression "CO[2] " to the left of the box with the **greenhouse gas** rating and add the expression MPG to the left of ...

... of the label: (1) The heading, "Fuel Economy and **Greenhouse Gas** Rating (tailpipe only)" in the top left corner of the ...

... of the field to characterize the vehicle's fuel economy and **greenhouse gas** ratings, as determined in § 600.311. Position a box with ...

... the vehicle's fuel economy rating inside the box. If the **greenhouse gas** rating from § 600.311 is different than the fuel economy ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

20. 40 CFR 71.2

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 71.2 Definitions.

... **Greenhouse gases** (GHGs), the air pollutant defined in § 86.1818-12(a) of this chapter as the aggregate group of six **greenhouse gases** : carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, ...

... mass amount of emissions (tpy), for each of the six **greenhouse gases** in the pollutant GHGs, by the **gas** 's associated global warming potential published at Table A-1 to subpart ...

... paragraph, prior to July 21, 2014, the mass of the **greenhouse gas** carbon dioxide shall not include carbon dioxide emissions resulting from ...

... and biodegradable organic fractions of industrial and municipal wastes, including **gases** and liquids recovered from the decomposition of non-fossilized and biodegradable ...

... pollutant released from the regulated activity. Except that: (1) **Greenhouse gases** (GHGs), the air pollutant defined in § 86.1818-12(a) of this chapter as the aggregate group of six **greenhouse gases** : carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, ...

... mass amount of emissions (tpy), for each of the six **greenhouse gases** in the pollutant GHGs, by the **gas** 's associated global warming potential published at Table A-1 to subpart ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

21. 40 CFR 423.11

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 423.11 Specialized definitions.

... in response to: (i) New source performance standards for **greenhouse gases** from new fossil fuel-fired electric generating units, under sections 111, ...

... 7411, 7601, 7602, 7607(d)(1)(C); (ii) Emission guidelines for **greenhouse gases** from existing fossil fuel-fired electric generating units, under sections 111, ...

... prior to recirculating the water to the main condenser. **40 C.F.R . § 423.11(n)** . Cooling ponds, by way of contrast, include ...

... not preceded by a notice and a public hearing. • **40 C.F.R . Part 423.11** defines "blowdown," "free available chlorine," and "once through ...

... is used to remove waste heat from condenser water. **40 C.F.R . § 423.11(m)** . Go To Headnote Real Property Law ...

... is used to remove waste heat from condenser water. **40 C.F.R . § 423.11(m)** . Go To Headnote NOTES APPLICABLE TO ...

... water to the receiving waters by July 1, 1981. **40 C.F.R . § 423** . However, there is an exception from thermal ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

22. 40 CFR PART 51 APPENDIX V

TITLE 40 -- PROTECTION OF ENVIRONMENT, APPENDIX V TO PART 51 -- CRITERIA FOR DETERMINING THE COMPLETENESS OF PLAN SUBMISSIONS

... 307-101-2 did not require best available control technology analysis for **greenhouse gases** , but integrated gasification combine cycle technology should have been considered ...

... 307-101-2 did not require best available control technology analysis for **greenhouse gases** , but integrated gasification combine cycle technology should have been considered ...

... air quality statutes. 42 U.S.C.S. § 7410; **40 C.F.R.** § 51 app. V. If this requirement and other ...
 ... receive EPA approval of a submitted tribal implementation plan. **40 C.F.R.** § 49.11(a) . Go To
 Headnote NOTES APPLICABLE TO ...
 ... for including emissions during malfunctions and an affirmative defense. • **40 C.F.R.** pt. 51, app. V,
 requires, inter alia, that state plans ...
 ... receive EPA approval of a submitted tribal implementation plan. **40 C.F.R.** § 49.11(a) . Go To
 Headnote Environmental Law : ...
 ... air quality statutes. 42 U.S.C.S. § 7410; **40 C.F.R.** § 51 app. V. If this requirement and other ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

23. 40 CFR 600.405-08

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 600.405-08 Dealer requirements.
 ... conditions and how you drive and maintain your vehicle." **40 C.F.R.** § 600.302-08(b)(4) , **40 C.F.R.** §
 600.302-12(b)(4) . The EPA is also required to prepare ...
 ... miles per gallon for both city and highway driving. **40 C.F.R.** §§ 600.302-08(b)(1) ; 600.302-11; 600.302-
 12(c)(1)(iv). The label must also advise ...
 ... available to prospective buyers. 49 U.S.C.S. § 32908 (c); **40 C.F.R.** §§ 600.405-08 and 407-08. Go To
 Headnote NOTES APPLICABLE ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

24. 40 CFR 600.302-08

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 600.302-08 [This section was removed. See 79 FR
 23414, 23747, Apr. 28, 2014.]
 ... conditions and how you drive and maintain your vehicle." **40 C.F.R.** § 600.302-08(b)(4) , **40 C.F.R.** §
 600.302-12(b)(4) . The EPA is also required to prepare ...
 ... miles per gallon for both city and highway driving. **40 C.F.R.** §§ 600.302-08(b)(1) ; 600.302-11; 600.302-
 12(c)(1)(iv). The label must also advise ...
 ... available to prospective buyers. 49 U.S.C.S. § 32908 (c); **40 C.F.R.** §§ 600.405-08 and 407-08. Go To
 Headnote NOTES APPLICABLE ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

25. 40 CFR 52.2346

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 52.2346 Significant deterioration of air quality.
 ... 307-101-2 did not require best available control technology analysis for **greenhouse gases** , but
 integrated gasification combine cycle technology should have been considered ...
 ... 307-101-2 did not require best available control technology analysis for **greenhouse gases** , but
 integrated gasification combine cycle technology should have been considered ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

26. 40 CFR 51.491

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 51.491 Definitions.
 ... agencies under the Clean Air Act for failing to control **greenhouse gas** emissions; the groups did not
 establish causality between the failure ...
 ... particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead. **40 C.F.R.** § 50 . The EPA has

not established NAAQS for **greenhouse gases** . Go To Headnote NOTES APPLICABLE TO ENTIRE CHAPTER: [PUBLISHER'S ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

27. 40 CFR 52.970

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 52.970 Identification of plan.

... 7401 et seq., implementation plan, codified at **40 C.F.R** . § 52.970 , requires a permit for the discharge of ...

... as effectiveQ on 04/20/2011 at LAC 33"carbon dioxide equivalent emissions", "**greenhouse gases** ", "major stationary source", and "significant". Section 511 Emission Reductions 11/20/1993 ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

28. 40 CFR 1504.1

TITLE 40 -- PROTECTION OF ENVIRONMENT, § 1504.1 Purpose.

... 4332 (2)(C), did not require a climate change or **greenhouse gases** analysis, and the EIS stated no national standards existed, and ...

... impact the public health or welfare or environmental quality. **40 C.F.R** . § 1504.1(b) . Go To Headnote NOTES APPLICABLE TO ...

Content: Administrative Codes | **Jurisdiction:** U.S. Federal

To: Schnare, David[schnare.david@epa.gov]
From: Smith, Loren (OST)
Sent: Mon 3/13/2017 5:27:11 PM
Subject: Re: mte notice

Got it

Sent from my iPhone

On Mar 13, 2017, at 1:17 PM, Schnare, David <schnare.david@epa.gov> wrote:

Sent from my iPhone

Begin forwarded message:

From: "Knapp, Kristien" <Knapp.Kristien@epa.gov>
To: "Schnare, David" <schnare.david@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>
Subject: Fwd: mte notice

I'm in a taxi now en route to DOT.

Sent from my iPhone

Begin forwarded message:

From: <DC-WJCN-3312-M@epa.gov>
Date: March 13, 2017 at 1:15:50 PM EDT
To: <knapp.kristien@epa.gov>

<image2017-03-13-131549.pdf>

To: Jefferson, Gayle[Jefferson.Gayle@epa.gov]; Reeder, John[Reeder.John@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Snipes, Rebecca[snipes.rebecca@epa.gov]; Randall, Brenda[Randall.Brenda@epa.gov]; Morina, Lenée[Morina.Lenee@epa.gov]
From: Konkus, John
Sent: Wed 3/1/2017 9:16:06 PM
Subject: RE: Parking Request

Thank you!

From: Jefferson, Gayle
Sent: Wednesday, March 1, 2017 4:04 PM
To: Reeder, John <Reeder.John@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>; Konkus, John <konkus.john@epa.gov>; Snipes, Rebecca <snipes.rebecca@epa.gov>; Randall, Brenda <Randall.Brenda@epa.gov>; Morina, Lenée <Morina.Lenee@epa.gov>
Subject: RE: Parking Request

That's great news John – thank you for reaching out.

Becky Snipes is the HQ Parking Program Manager, and I am copying her on this email; however, Becky is on vacation this week, so Brenda Randall, also copied on this email, will reach out to each of them, directly, to walk them through the next steps – she will be in touch right away so that they can begin parking quickly in the RRB Garage.

Thanks & let me know if you need anything further from me.

Regards-

Gayle

Gayle L. Jefferson

Acting Director

Facilities Management and Services Division (FMSD)

OA/OARM/USEPA

Main Number: (202)564-2030

Direct Number: (202)564-1630

Cell Number **Personal Phone/Ex. 6**

From: Reeder, John

Sent: Wednesday, March 01, 2017 3:25 PM

To: Jefferson, Gayle <Jefferson.Gayle@epa.gov>

Cc: Schnare, David <schnare.david@epa.gov>; Konkus, John <konkus.john@epa.gov>

Subject: Parking Request

Gayle,

David Schnare and John Konkus are approved for “special hours” subsidized parking.

Please can you advise us on the next steps to set this up?

Thank you.

JReeder

202 564 6082

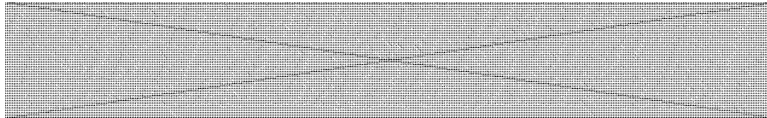
To: Schnare, David[schnare.david@epa.gov]
From: Sarvadi, David G.
Sent: Thur 3/9/2017 7:57:55 PM
Subject: We're available Wednesday.
removed.txt

Do you have a time in mind?

Cordially,
DGS

David G. Sarvadi
Attorney-at-Law
tel: 202-434-4249 fax 202-434-4646 | sarvadi@khlaw.com
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that will cover OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at



Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

To: Schnare, David[schnare.david@epa.gov]
From: Cleland-Hamnett, Wendy
Sent: Wed 3/8/2017 3:36:32 PM
Subject: RE: Chlorpyrifos One-Pager

We've given you the facts. But I'm willing to come over and talk to you this morning about this USDA paper if that would be helpful. I can do that any time between now and 12:30.

The document is a summary of their public comments, which were submitted for the docket.

Yes, this process is "abnormal", in that it's in response to a petition and not in the course of registration review. Not surprising that they don't agree with the science – it is cutting edge and controversial. We get the costs/benefits info from them; our briefing for you said the cost would be approximately \$330M. There are other organophosphates under "normal" review, but the epi study is on chlorpyrifos. Not clear yet what the "domino effect" would be, if any.

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

From: Schnare, David
Sent: Tuesday, March 07, 2017 10:29 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>

Subject: Fwd: Chlorpyrifos One-Pager

By noon Wednesday please provide an analysis of the attached memo from the Department of Agriculture, either admitting each statement or refuting it. I am not interested in further argument in support of the proposed finding. I want to know the facts, all the facts.

This memo raises deep concern regarding whether I and others were honestly briefed on this issue. I based my recommendations on those briefings. My confidence in both offices has need seriously reduced. I hope that is restored, based on whatever you produce by noon.

dschnare

Sent from my iPhone

Begin forwarded message:

From: "Dravis, Samantha" <dravis.samantha@epa.gov>
Date: March 7, 2017 at 5:51:27 PM EST
To: "Schnare, David" <schnare.david@epa.gov>, "Brown, Byron" <brown.byron@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>
Subject: FW: Chlorpyrifos One-Pager

Making sure the three of you had this as well.

From: Schwab, Justin
Sent: Tuesday, March 7, 2017 4:04 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Fwd: Chlorpyrifos One-Pager

See attached, USDA's concerns re chlorpyrifos

Sent from my iPhone

Begin forwarded message:

From: "Vaden, Stephen - OGC" <Stephen.Vaden@ogc.usda.gov>

Date: March 7, 2017 at 11:02:30 AM EST

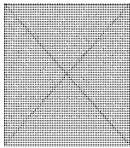
To: "schwab.justin@epa.gov" <schwab.justin@epa.gov>

Subject: Chlorpyrifos One-Pager

Justin,

Attached, please find a brief document outlining USDA's concerns in bullet form. As always, I am happy to discuss any of the points or put your staff in contact with our wonderful career people. They and I are willing to assist you in any way.

Stephen



Stephen Alexander Vaden

U.S. Department of Agriculture

Office of the General Counsel

**Senior Adviser to the Office of General
Counsel**

Whitten Building, Suite 107W

' 202-720-3351 (Voice)

To: Schnare, David[schnare.david@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Dravis, Samantha
Sent: Wed 3/8/2017 8:26:07 PM
Subject: Re: CAFE FR Notice ready for signature

Byron is in his office now- BB, can you show this to him? Thanks.

Sent from my iPhone

On Mar 8, 2017, at 3:22 PM, Schnare, David <schnare.david@epa.gov> wrote:

The attached is ready for signature, but for putting in the exact date of the signature directly above the signature block.

We need to get this signed and sent back to DOT for the Secretary's signature.

I would most appreciate it if this is signed today. We will hold it for FR publication until the White House directs us to have it published.

David W. Schnare

Assistant Deputy Administrator

US. EPA

<CAFE-FINAL FINAL-joint-notice-DOT-EPA.docx>

To: Schnare, David[schnare.david@epa.gov]
From: Jackson, Ryan
Sent: Sun 3/12/2017 11:30:01 PM

David, I need to talk to you about a matter in the morning. In the meantime, can you hang back from attending the 8am meeting?

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Schnare, David[schnare.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Konkus, John
Sent: Tue 3/7/2017 3:30:10 PM
Subject: RE: Draft Talking Points
WH Infrastructure Speech Card.docx

See if you like this approach better. Updated card attached.

From: Jackson, Ryan
Sent: Tuesday, March 7, 2017 9:56 AM
To: Konkus, John <konkus.john@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Schnare, David <schnare.david@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: Re: Draft Talking Points

Deliberative Process Privilege/Ex. 5

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

On Mar 6, 2017, at 4:29 PM, Konkus, John <konkus.john@epa.gov> wrote:

Draft talking points in both pocket card and memo format attached.

Thank you,

John Konkus

From: Jackson, Ryan
Sent: Monday, March 6, 2017 1:27 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Schnare, David

<schnare.david@epa.gov>; Konkus, John <konkus.john@epa.gov>; Brown, Byron
<brown.byron@epa.gov>
Subject: Fwd: Pruitt

John, we'll need talking points in this. SRF, WIFIA, stories, need. That type of thing.

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

Begin forwarded message:

From: "Gunn, Ashley L. EOP/WHO" <[REDACTED] EOP/Ex. 6>
Date: March 6, 2017 at 11:10:14 AM MST
To: "Jackson, Ryan" <jackson.ryan@epa.gov>
Cc: "Murphy, Christine M. EOP/WHO" <[REDACTED] EOP/Ex. 6> "Hale,
Michelle" <hale.michelle@epa.gov>
Subject: Re: Pruitt

Shd be coming out tonight or in the am. Will forward asap!

Thank you,
Ashley Gunn
Senior Director
Cabinet Affairs
The White House

[REDACTED] Personal Phone/Ex. 6

Please excuse typos. Sent from my iPhone

On Mar 6, 2017, at 1:05 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Yes for sure. Do you have more info on it attendees, and the itinerary yet?

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

On Mar 6, 2017, at 10:42 AM, Gunn, Ashley L. EOP/WHO

<**EOP/Ex. 6**> wrote:

And is he aware/confirmed for the Wed Infrastructure meeting? There is first a working meeting from 9-12:30 in EEOB, followed by 12:30-1:30 lunch with POTUS in Roosevelt Room.

-----Original Message-----

From: Jackson, Ryan [<mailto:jackson.ryan@epa.gov>]

Sent: Monday, March 6, 2017 11:24 AM

To: Gunn, Ashley L. EOP/WHO <**EOP/Ex. 6**>

Subject: Pruitt

Ashley, I'm sorry for the late notice but the Administrator is speaking to the National Association of Manufacturers today in Scottsdale at their board meeting. He'll be back in Washington tomorrow. He's planning to speak Thursday afternoon at CERA Week in Houston.

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

<EPA Infrastructure Talking Points.docx>

<WH Infrastructure Speech Card.docx>

WH Infrastructure Conference

THEME: Rebuild America/Avoid A Crisis/Create Jobs

Harvard Political Review: “...a significant structural water crisis pervades throughout the United States.”

CRISIS

- When water infrastructure goes bad, it goes really bad.
- We can avoid the next Flint, where they still can't drink the water
- We know other cities are struggling with failing systems...East Chicago
- In addition to East Chicago, IN – Cape Coral, FL and Houston, TX have immediate needs

BRIDGE: Water infrastructure is part of EPA's core mission, we have to refocus on the core mission to prevent more crises, doing so will also rebuild our infrastructure and create jobs.

EPA CORE MISSION

- Public health
- Clean air, clean water
- Need to refocus on the core mission

RESOURCES

- EPA knows where the problems exist: testing, science, communication with stakeholders
- Funding via revolving funds, WIFA
- SRF (State Revolving Fund) a federal-state partnership that provides communities a permanent, independent source of low-cost financing for water infrastructure projects
- WIFIA accelerates investment in water infrastructure by providing long-term, low-cost loans

JOB

- POTUS directing us to rebuild
- Rebuilding water infrastructure will create jobs
- SRF has \$150B in available funding = potentially 3.6 M jobs.
- EPA's latest survey of states estimates \$739B needed in water infrastructure over next 20 years.

To: Schnare, David[schnare.david@epa.gov]; Smith, Loren (OST)[Loren.Smith@dot.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Richardson, RobinH
Sent: Tue 3/14/2017 3:56:44 PM
Subject: RE: David - plan re congressional rollout?

Thank you David! Yes, I will reach out to Loren to coordinate and keep everyone current. Best,
Robin

Robin H Richardson
Principal Deputy Associate Administrator
Office of Congressional and Intergovernmental Relations
U.S. Environmental Protection Agency
202-564-3358 (desk)
703-581-5814 (cell)
richardson.robinh@epa.gov

From: Schnare, David
Sent: Tuesday, March 14, 2017 11:49 AM
To: Smith, Loren (OST) <Loren.Smith@dot.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>
Subject: Re: David - plan re congressional rollout?

Robin can you coordinate this?

dschnare

Sent from my iPhone

On Mar 14, 2017, at 11:21 AM, Smith, Loren (OST) <Loren.Smith@dot.gov> wrote:

We would like to contact members of our oversight committees with a short statement on the joint notice, at the appropriate moment. Can you loop me in with your folks? Then we can reach out to WH as appropriate.

+++

Loren Smith

U.S. Department of Transportation

West Building – W85-115

loren.smith@dot.gov

202-430-2952

To: Grantham, Nancy[Grantham.Nancy@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]
From: Knapp, Kristien
Sent: Mon 3/13/2017 5:26:57 PM
Subject: Re: mte notice

Just handed to Loren.

Sent from my iPhone

> On Mar 13, 2017, at 1:21 PM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:

>

> Thx

>

> Sent from my iPhone

>

>> On Mar 13, 2017, at 1:14 PM, Knapp, Kristien <Knapp.Kristien@epa.gov> wrote:

>>

>> I'm in a taxi now en route to DOT.

>>

>> Sent from my iPhone

>>

>> Begin forwarded message:

>>

>> From: <DC-WJCN-3312-M@epa.gov<mailto:DC-WJCN-3312-M@epa.gov>>

>> Date: March 13, 2017 at 1:15:50 PM EDT

>> To: <knapp.kristien@epa.gov<mailto:knapp.kristien@epa.gov>>

>>

>> <image2017-03-13-131549.pdf>

To: Dravis, Samantha[dravis.samantha@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Rees, Sarah
Sent: Mon 3/6/2017 6:28:06 PM
Subject: RE: Resending - EPA Request regarding Cholla

Yes – this is one of the actions that we were cleared to send on Friday; it was sent to the Federal Register today.

From: Dravis, Samantha
Sent: Monday, March 06, 2017 12:18 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>
Subject: Re: Resending - EPA Request regarding Cholla

I thought we released this? Sarah can you confirm ?

Sent from my iPhone

On Mar 6, 2017, at 12:10 PM, Schnare, David <schnare.david@epa.gov> wrote:

Samantha and Sarah:

Can you see whether this is still frozen or is it on the list we have now decided to released? If it is heading out the door, can you send Ms. Cagle a note as to its status.

d.

From: molly.cagle@bakerbotts.com [<mailto:molly.cagle@bakerbotts.com>]
Sent: Monday, March 6, 2017 12:07 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: jeffrey.allmon@pinnaclewest.com
Subject: Resending - EPA Request regarding Cholla
Importance: High

David,

First, thank you for your work on the Transition Team. I can't imagine how long your days are. Second, thank you for agreeing to take a look at this matter related to the Cholla Power Plant ("Cholla") in northern Arizona. The January 20th regulatory freeze has resulted in a hold being placed on the final rule containing the Best Available Retrofit Technology ("BART") reassessment for the Cholla facility, and without that reassessment, the owners will have to shut Cholla down in December 2017. The final rule cannot take effect unless and until it is published in the Federal Register. When the reassessment takes effect, the owners will have certainty as to the viability of existing contracts for the purchase of coal and can operate Cholla for many more years to come. Under the circumstances, you can probably appreciate that the lingering uncertainty about the fate of the plant's BART reassessment is unnerving for the plant owners and its hundreds of employees. Given that EPA already has signed off on the environmental side of the Cholla BART reassessment, it seems clear that expeditiously allowing this rule to take effect is consistent with President Trump's repeated statements to preserve coal facilities and jobs in the USA.

Issue

On January 13, 2017, then U.S. EPA Administrator Gina McCarthy signed a final rule approving a source-specific SIP revision for the coal-fired Cholla plant near Winslow, Arizona (attached for reference). This action finalized a state BART determination for Cholla based upon a reassessment of circumstances surrounding future operation of the plant in compliance with the Regional Haze Rule (i.e., the "Cholla BART Reassessment"). Without this reassessment, Cholla would be required to install selective catalytic reduction ("SCR") controls on Units 3 and 4 on or before December 5, 2017 or cease operation, pursuant to a 2012 Regional Haze Federal Implementation Plan ("FIP"). At this time, the owners will NOT be able to install SCR controls at Cholla by the current deadline. Hence, if the 2017 Cholla BART Reassessment final rule is not allowed to take effect, this coal-fired facility will be required to close. In addition, further delays in formal publication of the 2017 final rule creates lingering regulatory uncertainty as to the future of the Cholla plant before the Arizona state utility commission.

Our Ask

Arizona Public Service Company (“APS”), (my client) as operating agent and co-owner of the Cholla facility, requests that U.S. EPA publish the 2017 federal rule, which approves the source- specific Regional Haze SIP for Cholla, in the Federal Register as soon as possible. Publication of the final rule is a necessary prerequisite for the rule to take effect.

Additional Facts

We are prepared to meet with you in DC or to set up a conference call to discuss the details of the Cholla BART reassessment, but the “sum up” version of the story is:

- Beginning in 2008, APS undertook a project to voluntarily reduce emissions of NO_x, SO₂ and PM at Cholla through the installation and upgrade of Low NO_x Burners (“LNB”), SO₂ scrubbers, and baghouses for PM. In 2011, the Arizona Department of Environmental Quality (“ADEQ”) proposed the approval of these voluntary pollution control measures as BART for Cholla.
- On December 5, 2012, EPA promulgated a final action approving in part and disapproving in part a Regional Haze SIP submitted by ADEQ containing the Department’s 2010 BART determination. See 77 Fed. Reg. 72,512 (Dec. 5, 2012). The Agency identified what it believed were significant flaws in the way ADEQ identified BART for NO_x at Cholla. As such, EPA promulgated a FIP for Cholla imposing a far-lower NO_x emission limit (i.e., 0.055 lb/MMBTU)—which could only be achieved through installation of SCR controls—and required compliance by December 5, 2017.
- In order to avoid application of the 2012 EPA BART FIP for Cholla, which would have made continued operation of the plant uneconomical, Cholla’s owners committed to the following specific actions:
 - o Permanently close Cholla Unit 2 by April 1, 2016 (which has already occurred);

- o Operate existing pollution controls at the plant; and
- o By April 30, 2025, permanently cease coal burning at all Cholla units, with the option to convert the units to natural gas later that year (subject to a 20% capacity factor).
- Based on a state reassessment of BART requirements for Cholla that relied upon these commitments, on October 22, 2015, ADEQ submitted a revision to the Arizona Regional Haze SIP intended to replace the 2012 BART FIP.
- On January 13, 2017, U.S. EPA published a final rule approving the Arizona Regional Haze SIP revisions that included the Cholla BART Reassessment and withdrawing the 2012 FIP.

I am attaching a copy of EPA's final Fact Sheet for the Cholla BART Reassessment, and the rule, which is ready for publication in the Federal Register so that it may take effect.

Please let me know what additional information you need, or if we should meet with you or others within the Agency to talk further about our circumstances.

Best,

Molly Cagle

Molly Cagle

Partner

Baker Botts L.L.P.

Molly.cagle@bakerbotts.com

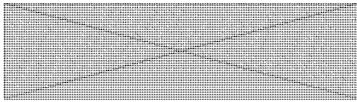
O +1.512.322.2535

M Personal Phone/Ex. 6

98 San Jacinto Blvd. #1500

Austin, Texas 78701

USA



<image002.png><image003.png><image004.png><image005.png><image006.png>

Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

<removed.txt>

<Cholla NFRM_prepublication version.docx>

<2017_0113 Cholla Final Action Fact Sheet.docx>

To: Schnare, David[schnare.david@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]
From: Grantham, Nancy
Sent: Thur 3/9/2017 7:50:23 PM
Subject: RE: Midterm notice

Yes .. we just got them and Kristien is on her way

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Schnare, David
Sent: Thursday, March 09, 2017 2:42 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Knapp, Kristien <Knapp.Kristien@epa.gov>
Subject: RE: Midterm notice

Do that as well.

d.

From: Grantham, Nancy
Sent: Thursday, March 9, 2017 2:41 PM
To: Knapp, Kristien <Knapp.Kristien@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: RE: Midterm notice

If come over here – we can call our contacts there. Thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Knapp, Kristien

Sent: Thursday, March 09, 2017 2:40 PM

To: Schnare, David <schnare.david@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>

Subject: FW: Midterm notice

Autopen signature complete.

I'm now ready to get it to DOT. David, is there someone in particular I should get in touch with?

To: Schnare, David[schnare.david@epa.gov]
From: Vizian, Donna
Sent: Wed 3/8/2017 3:26:36 PM
Subject: SES vacancies
PENDING SES INFO Mar 1.docx
LIST OF UNREQUESTED VACANT CAREER SES POSITIONS.docx

Good morning, here are 2 reports that capture the SES vacancies, for the most part. The Pending SES is the list of recruitment actions that had been approved for backfill. All are in different stages. You will also see with a few names. The second is the list of vacancies for which a recruitment is not underway. There are other positions that have been classified as SES but the vacancies currently do not exist. An example for be the director of facilities here is OARM. We decided several years ago to make all the divisions in the Office of Administration GS15 positions. The pending report was shared with Ryan. The other was not shared at the meeting because no decision is pending on those. Happy to talk through these.

LIST OF UNREQUESTED VACANT CAREER SES POSITIONS

As of February 14, 2017

1. Director, Office of Environmental Education; AO
2. Deputy Director, Office of Civil Rights; AO
3. Director, Executive Resources Division; OARM
4. Deputy Director, Office of Transportation and Air Quality; OAR
5. Deputy Director for Programs, Office of Pollution Prevention and Toxics; OCSP
6. Director, Office of Pesticide Programs; OCSP
7. Director, Federal Facilities Enforcement Office; OECA
8. Director, Enforcement Targeting and Data Division; OECA
9. Director, International Compliance Assurance Division; OECA
10. Director, Air Pollution Prevention and Control Division; ORD
11. Associate Director for Ecology; ORD
12. Deputy Director for Management – NHSRC; ORD
13. Director, Oceans and Coastal Protection Division; OW

To: Schnare, David[schnare.david@epa.gov]
From: Dunham, Sarah
Sent: Wed 3/8/2017 8:25:41 PM
Subject: RE: CAFE Notice

Ok, happy to talk whenever works for you. I have a phone call scheduled at 4 for at most 30 minutes but could talk before or after that. Let me know when would be good and I am happy to call or come down to your office

From: Schnare, David
Sent: Wednesday, March 08, 2017 3:12 PM
To: Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: RE: CAFE Notice

Thx.

New subject. We need to talk about the RFS Small Refineries Exemptions denials. Pruitt made up his mind about them this am and I need to convey where he is at.

d.

From: Dunham, Sarah
Sent: Wednesday, March 8, 2017 2:38 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: CAFE Notice

Ok—if its necessary to have a program office contact, Bill Charmley would be the best contact.

From: Dunham, Sarah
Sent: Wednesday, March 08, 2017 2:23 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: CAFE Notice

I'm running someone down. (I had thought David Orlin from OGC had agreed to have his name listed if we needed to have an EPA name)

From: Schnare, David
Sent: Wednesday, March 08, 2017 2:09 PM
To: Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: CAFE Notice

Sarah:

I need the name of a person, presumably in OTAQ, who will be named as the contact in the CAFÉ FR Notice. I need this asap as I want to get this signed by the Administrator today. Can you get me someone's name immediately?

Dschnare

To: McInerney, Marianne (OST)[marianne.mcinerney@dot.gov]
Cc: Schnare, David[schnare.david@epa.gov];
Kaelan.K.Dorr([REDACTED] EOP/Ex. 6); Moore, Allison (OST)[A.Moore@dot.gov];
Bradley.A.Rateike([REDACTED] EOP/Ex. 6)
From: Konkus, John
Sent: Sun 3/12/2017 6:12:16 PM
Subject: Re: CAFE discussion draft: joint DOT-EPA draft notice TALKERS

I think these are very well done. We can move forward with these as our official EPA/DOT talking points if everyone is in concurrence.

> On Mar 10, 2017, at 4:55 PM, McInerney, Marianne (OST) <marianne.mcinerney@dot.gov> wrote:
>
> Please see attached for discussion and use.
>
> Marianne McInerney
> Office of the Secretary
> U.S. Department of Transportation
> Mobile: 202.430.3599
>
> <3.10.17 CAFE TalkersMM.docx>

To: Schnare, David[schnare.david@epa.gov]
From: Mortimer, Megan
Sent: Wed 3/15/2017 3:47:39 PM
Subject: RE: Meeting Request RE NESHAP for Felman

I very much appreciate your response. I hope that we can find some time to meet with you in the near future. Is there anyone else on your team that we could/should meet with tomorrow? Or should we wait until we can get on your schedule?

Thanks again!

-megan

Megan M. Mortimer, Government Relations Professional
Cozen O'Connor Public Strategies
1200 19th Street, NW | Washington, DC 20036
P: 202-463-2536 F: 202-640-5936
Email | Bio | LinkedIn | Map | cozen.com

-----Original Message-----

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Wednesday, March 15, 2017 11:34 AM
To: Mortimer, Megan <MMortimer@cozen.com>
Subject: RE: Meeting Request RE NESHAP for Felman

Megan:

My apologies for not responding sooner. I simply am unable to meet tomorrow.

David Schnare

-----Original Message-----

From: Mortimer, Megan [mailto:MMortimer@cozen.com]
Sent: Wednesday, March 15, 2017 11:28 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: FW: Meeting Request RE NESHAP for Felman

Good Morning Mr. Schnare,

I apologize for following up so quickly but since this request is for tomorrow I thought I would give it a try!

Please let me know if you have any availability tomorrow.

Thanks so much!

-Megan M.

Megan M. Mortimer, Government Relations Professional Cozen O'Connor Public Strategies
1200 19th Street, NW | Washington, DC 20036
P: 202-463-2536 F: 202-640-5936
Email | Bio | LinkedIn | Map | cozen.com

-----Original Message-----

From: Mortimer, Megan
Sent: Tuesday, March 14, 2017 3:43 PM
To: schnare.david@epa.gov
Subject: Meeting Request RE NESHAP for Felman

>> Good Afternoon Mr. Schnare,
>>
>> I am writing to request a meeting with you on behalf of our client Felman Production to discuss the NESHAP final rule regarding the production of ferroalloys. We know that you have had conversations with representatives from Eramet Marietta on this issue and they thought it would be beneficial for us to reach out to you as well.
>>
>> It turns out that the General Counsel for Felman, Robert Powell, will be in DC this Thursday March 16. Do you have any time on that day for a meeting with Mr. Powell?
>>
>> Thanks so much!
>> Megan Mortimer
>>
>> Megan Mortimer, Cozen O'Connor Public Strategies
>> 202-463-2536
>>
>> Sent from my iPad

Notice: This communication, including attachments, may contain information that is confidential and protected by the attorney/client or other privileges. It constitutes non-public information intended to be conveyed only to the designated recipient(s). If the reader or recipient of this communication is not the intended recipient, an employee or agent of the intended recipient who is responsible for delivering it to the intended recipient, or you believe that you have received this communication in error, please notify the sender immediately by return e-mail and promptly delete this e-mail, including attachments without reading or saving them in any manner. The unauthorized use, dissemination, distribution, or reproduction of this e-mail, including attachments, is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) is not a waiver of any attorney/client or other privilege.

Notice: This communication, including attachments, may contain information that is confidential and protected by the attorney/client or other privileges. It constitutes non-public information intended to be conveyed only to the designated recipient(s). If the reader or recipient of this communication is not the intended recipient, an employee or agent of the intended recipient who is responsible for delivering it to the intended recipient, or you believe that you have received this communication in error, please notify the sender immediately by return e-mail and promptly delete this e-mail, including attachments without reading or saving them in any manner. The unauthorized use, dissemination, distribution, or reproduction of this e-mail, including attachments, is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) is not a waiver of any attorney/client or other privilege.

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Schnare, David[schnare.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Konkus, John
Sent: Mon 3/6/2017 6:27:52 PM
Subject: Re: Pruitt

Got it.

Sent from my iPhone

On Mar 6, 2017, at 1:27 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

John, we'll need talking points in this. SRF, WIFIA, stories, need. That type of thing.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

Begin forwarded message:

From: "Gunn, Ashley L. EOP/WHO" <[REDACTED] EOP/Ex. 6>
Date: March 6, 2017 at 11:10:14 AM MST
To: "Jackson, Ryan" <jackson.ryan@epa.gov>
Cc: "Murphy, Christine M. EOP/WHO" <[REDACTED] EOP/Ex. 6> "Hale, Michelle" <hale.michelle@epa.gov>
Subject: Re: Pruitt

Shd be coming out tonight or in the am. Will forward asap!

Thank you,
Ashley Gunn
Senior Director
Cabinet Affairs
The White House

Personal Phone/Ex. 6

Please excuse typos. Sent from my iPhone

On Mar 6, 2017, at 1:05 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Yes for sure. Do you have more info on it attendees, and the itinerary yet?

Ryan Jackson

Chief of Staff

U.S. EPA

Personal Phone/Ex. 6

On Mar 6, 2017, at 10:42 AM, Gunn, Ashley L. EOP/WHO

<**EOP/Ex. 6**> wrote:

And is he aware/confirmed for the Wed Infrastructure meeting? There is first a working meeting from 9-12:30 in EEOB, followed by 12:30-1:30 lunch with POTUS in Roosevelt Room.

-----Original Message-----

From: Jackson, Ryan [<mailto:jackson.ryan@epa.gov>]

Sent: Monday, March 6, 2017 11:24 AM

To: Gunn, Ashley L. EOP/WHO <**EOP/Ex. 6**>

Subject: Pruitt

Ashley, I'm sorry for the late notice but the Administrator is speaking to the National Association of Manufacturers today in Scottsdale at their board meeting. He'll be back in Washington tomorrow. He's planning to speak Thursday afternoon at CERA Week in Houston.

Ryan Jackson

Chief of Staff

U.S. EPA

Personal Phone/Ex. 6

To: Schnare, David[schnare.david@epa.gov]
From: Smith, Loren (OST)
Sent: Wed 3/8/2017 3:08:55 PM
Subject: Heads up

Sending to you in 15min

Sent from my iPhone

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]; Burley, Veronica[Burley.Veronica@epa.gov]; Willis, Sharnett[Willis.Sharnett@epa.gov]; Burton, Tamika[burton.tamika@epa.gov]; Anderson, Denise[anderson.denise@epa.gov]; Dickerson, Aaron[dickerson.aaron@epa.gov]; Schnare, David[schnare.david@epa.gov]; Allen, Reginald[Allen.Reginald@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Hull, George[Hull.George@epa.gov]
From: Reeder, John
Sent: Wed 3/8/2017 8:16:28 PM
Subject: leaving the office now

Ryan and team,

Personal Matters/Ex. 6

I will have a big pile of business for Ryan tomorrow, assuming we'll have an opportunity to meet.

Thank you.

JReeder

202 564 6082 (direct)

202 236 8656 (mobile)

To: Schnare, David[schnare.david@epa.gov]
From: Konkus, John
Sent: Sun 3/12/2017 5:59:56 PM
Subject: Fwd: The Endangerment Issue - FLAG for Wednesday; Issue

Are we doing something about this endangerment finding along with the café re-examination?

Begin forwarded message:

From: "McInerney, Marianne (OST)" <marianne.mcinerney@dot.gov>
Date: March 12, 2017 at 1:57:20 PM EDT
To: "Konkus, John" <konkus.john@epa.gov>, "Kaelan.K.Dorr" **EOP/Ex. 6**
<Kaelan.K.Dorr" **EOP/Ex. 6**
Subject: The Endangerment Issue - FLAG for Wednesday; Issue

https://www3.epa.gov/climatechange/Downloads/endangerment/EndangermentFinding_FAQs.pdf

Marianne McInerney

Office of the Secretary

U.S. Department of Transportation

Mobile: 202.430.3599

To: Schnare, David[schnare.david@epa.gov]
From: Grantham, Nancy
Sent: Mon 3/13/2017 5:23:13 PM
Subject: Re: CAFE notice

Will do

Sent from my iPhone

On Mar 13, 2017, at 1:05 PM, Schnare, David <schnare.david@epa.gov> wrote:

Please handle and let me know.
d

Sent from my iPhone

Begin forwarded message:

From: "Smith, Loren (OST)" <Loren.Smith@dot.gov>
Date: March 13, 2017 at 12:59:48 PM EDT
To: David Schnare <schnare.david@epa.gov>
Subject: CAFE notice

Please email me the final Word doc version as well - it is part of the Federal Register submission process.

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]
From: Grantham, Nancy
Sent: Thur 3/9/2017 7:41:39 PM
Subject: RE: Midterm notice

Perfect .. thanks

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Schnare, David
Sent: Thursday, March 09, 2017 2:41 PM
To: Knapp, Kristien <Knapp.Kristien@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Re: Midterm notice

Loren Smith. 202-430-2952

Sent from my iPhone

On Mar 9, 2017, at 2:39 PM, Knapp, Kristien <Knapp.Kristien@epa.gov> wrote:

Autopen signature complete.

I'm now ready to get it to DOT. David, is there someone in particular I should get in touch with?

<image2017-03-09-144805.pdf>

To: Schnare, David[schnare.david@epa.gov]
From: Hull, George
Sent: Sun 3/12/2017 2:27:09 PM
Subject: Re: CAFE discussion draft: joint DOT-EPA draft notice TALKERS

Thanks, David.

Sent from my iPhone

On Mar 12, 2017, at 9:24 AM, Schnare, David <schnare.david@epa.gov> wrote:

FYI
dschnare

Sent from my iPhone

Begin forwarded message:

From: "McInerney, Marianne (OST)" <marianne.mcinerney@dot.gov>
Date: March 11, 2017 at 4:32:52 PM EST
To: "Konkus, John" <konkus.john@epa.gov>
Cc: "schnare.david@epa.gov" <schnare.david@epa.gov>, "Kaelan.K.Dorr" <Kaelan.K.Dorr@dot.gov> EOP/Ex. 6 "Moore, Allison (OST)" <A.Moore@dot.gov>, "Bradley.A.Rateike" <Bradley.A.Rateike@dot.gov> EOP/Ex. 6
Subject: RE: CAFE discussion draft: joint DOT-EPA draft notice TALKERS

John and Dave

I wanted to be sure that you received the draft talkers yesterday. Please let me know if you want to discuss over the weekend.

Thank you
Marianne

Marianne McInerney
Office of the Secretary
U.S. Department of Transportation
Mobile: 202.430.3599

-----Original Message-----

From: McInerney, Marianne (OST)
Sent: Friday, March 10, 2017 4:55 PM
To: 'Konkus, John'

Cc: 'schnare.david@epa.gov'; Kaelan.K.Dorr

EOP/Ex. 6

Bradley.A.Rateike **EOP/Ex. 6**

Subject: CAFE discussion draft: joint DOT-EPA draft notice TALKERS

Please see attached for discussion and use.

Marianne McInerney
Office of the Secretary
U.S. Department of Transportation
Mobile: 202.430.3599

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Schnare, David[schnare.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Konkus, John
Sent: Tue 3/7/2017 3:24:48 PM
Subject: RE: Draft Talking Points

Deliberative Process Privilege/Ex. 5

I can make these the last points on the card.

From: Jackson, Ryan
Sent: Tuesday, March 7, 2017 9:56 AM
To: Konkus, John <konkus.john@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Schnare, David <schnare.david@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: Re: Draft Talking Points

Deliberative Process Privilege/Ex. 5

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

On Mar 6, 2017, at 4:29 PM, Konkus, John <konkus.john@epa.gov> wrote:

Draft talking points in both pocket card and memo format attached.

Thank you,

John Konkus

From: Jackson, Ryan
Sent: Monday, March 6, 2017 1:27 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Schnare, David <schnare.david@epa.gov>; Konkus, John <konkus.john@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: Fwd: Pruitt

John, we'll need talking points in this. SRF, WIFIA, stories, need. That type of thing.

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

Begin forwarded message:

From: "Gunn, Ashley L. EOP/WHO" EOP/Ex. 6
Date: March 6, 2017 at 11:10:14 AM MST
To: "Jackson, Ryan" <jackson.ryan@epa.gov>
Cc: "Murphy, Christine M. EOP/WHO" <EOP/Ex. 6 "Hale, Michelle" <hale.michelle@epa.gov>
Subject: Re: Pruitt

Shd be coming out tonight or in the am. Will forward asap!

Thank you,
Ashley Gunn
Senior Director
Cabinet Affairs
The White House

EOP/Ex. 6

Please excuse typos. Sent from my iPhone

On Mar 6, 2017, at 1:05 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Yes for sure. Do you have more info on it attendees, and the itinerary yet?

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

On Mar 6, 2017, at 10:42 AM, Gunn, Ashley L. EOP/WHO

<[EOP/Ex. 6](#)> wrote:

And is he aware/confirmed for the Wed Infrastructure meeting? There is first a working meeting from 9-12:30 in EEOB, followed by 12:30-1:30 lunch with POTUS in Roosevelt Room.

-----Original Message-----

From: Jackson, Ryan [<mailto:jackson.ryan@epa.gov>]

Sent: Monday, March 6, 2017 11:24 AM

To: Gunn, Ashley L. EOP/WHO <[EOP/Ex. 6](#)>

Subject: Pruitt

Ashley, I'm sorry for the late notice but the Administrator is speaking to the National Association of Manufacturers today in Scottsdale at their board meeting. He'll be back in Washington tomorrow. He's planning to speak Thursday afternoon at CERA Week in Houston.

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

<EPA Infrastructure Talking Points.docx>

<WH Infrastructure Speech Card.docx>

To: Personal Email/Ex. 6 Personal Email/Ex. 6
From: Microsoft Outlook
Sent: Mon 3/6/2017 6:10:17 PM
Subject: Undeliverable: Fwd: Contact information
Fwd: Contact information



Your message to Personal Email/Ex. 6 couldn't be delivered.

Personal Email/Ex. 6

schnare.david

Office 365

Personal Email/Ex. 6

Action Required

Recipient

Unknown To address

How to Fix It

The address may be misspelled or may not exist. Try one or more of the following:

- **Send the message again following these steps:** In Outlook, open this non-delivery report (NDR) and choose **Send Again** from the Report ribbon. In Outlook on the web, select this NDR, then select the link "To send this message again, click here." Then delete and retype the entire recipient address. If prompted with an Auto-Complete List suggestion don't select it. After typing the complete address, click Send.
- Contact the recipient (by phone, for example) to check that the address exists and is correct.
- The recipient may have set up email forwarding to an incorrect address. Ask them to check that any forwarding they've set up is working correctly.
- Clear the recipient Auto-Complete List in Outlook or Outlook on the web by following the steps in this article: [Fix email delivery issues for error code 5.1.1 in Office 365](#), and then send the message again. Retype the entire recipient address before selecting Send.

If the problem continues, forward this message to your email admin. If you're an email admin, refer to the More Info for Email Admins section below.

Was this helpful? [Send feedback to Microsoft.](#)

More Info for Email Admins

Status code: 550 5.1.1

This error occurs because the sender sent a message to an email address outside of Office 365, but the address is incorrect or doesn't exist at the destination domain. The error is reported by the recipient domain's email server, but most often it must be fixed by the person who sent the message. If the steps in the **How to Fix It** section above don't fix the problem, and you're the email admin for the recipient, try one or more of the following:

The email address exists and is correct - Confirm that the recipient address exists, is correct, and is accepting messages.

Synchronize your directories - If you have a hybrid environment and are using directory synchronization make sure the recipient's email address is synced correctly in both Office 365 and in your on-premises directory.

Errant forwarding rule - Check for forwarding rules that aren't behaving as expected. Forwarding can be set up by an admin via mail flow rules or mailbox forwarding address settings, or by the recipient via the Inbox Rules feature.

Mail flow settings and MX records are not correct - Misconfigured mail flow or MX record settings can cause this error. Check your Office 365 mail flow settings to make sure your domain and any mail flow connectors are set up correctly. Also, work with your domain registrar to make sure the MX records for your domain are configured correctly.

For more information and additional tips to fix this issue, see [Fix email delivery issues for error code 550 5.1.1 in Office 365](#).

Original Message Details

Created Date: 3/6/2017 6:10:14 PM
Sender Address: schnare.david@epa.gov
Recipient Address: Personal Email/Ex. 6
Subject: Fwd: Contact information

Error Details

Reported error: 550 5.1.1 <marlae.schnare@cox.net> invalid recipient - Refer to Error Codes section at <http://postmaster.cox.net/confluence/display/postmaster/Error+Codes> for more information.

DSN generated by: BN6PR09MB1346.namprd09.prod.outlook.com

Remote server: eastrmimpi210.cox.net

Message Hops

HO	TIME (UTC)	FROM	TO	WITH	RELAY TIME
1	3/6/2017 6:10:14 PM	BN6PR09MB1505.namprd09.prod.outlook.com	BN6PR09MB1505.namprd09.prod.outlook.com	BN6PR09MB1505.namprd09.prod.outlook.com	*

2 3/6/2017 6:10:15 PM BN6PR09MB1505.namprd09.prod.outlook.com BN6PR09MB1346.namprd09.prod.outlook.com Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_GCM_SHA384) 1 sec

Original Message Headers

DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=usepa.onmicrosoft.com; s=selector1-epa-gov; h=From:Date:Subject:Message-ID:Content-Type:MIME-Version; bh=HsbNANW8RUFxkxRoycxWbqvNwnEVXdNktXUuMGTYkU=;

b=kIlupsCy/nVQm91PAeZFbvfoHK4AttWlxCl9FEJ3KrsOB5i9ZXawlhtNXEvPV/4P31zO4CpXWT9QxV/0G85E+sNf

Received: from BN6PR09MB1505.namprd09.prod.outlook.com (10.173.202.145) by BN6PR09MB1346.namprd09.prod.outlook.com (10.172.22.13) with Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_CBC_SHA384_P384) id 15.1.947.12; Mon, 6 Mar 2017 18:10:15 +0000

Received: from BN6PR09MB1505.namprd09.prod.outlook.com ([10.173.202.145]) by BN6PR09MB1505.namprd09.prod.outlook.com ([10.173.202.145]) with mapi id 15.01.0947.018; Mon, 6 Mar 2017 18:10:14 +0000

From: "Schnare, David" <schnare.david@epa.gov>

To: "marlae.schnare@cox.net" <marlae.schnare@cox.net>, "Willis, Sharnett" <Willis.Sharnett@epa.gov>

Subject: Fwd: Contact information

Thread-Topic: Contact information

Thread-Index: AQHSlqSVBDy4lgn6E0m9ezuXQyqklaGIHIVO

Date: Mon, 6 Mar 2017 18:10:14 +0000

Message-ID: <2B472EDF-E238-44F7-A5EC-A69980427FE5@epa.gov>

References: <E4FF0E2F-F5E3-45BC-BBF0-C9B4FA1BA498@epa.gov>

In-Reply-To: <E4FF0E2F-F5E3-45BC-BBF0-C9B4FA1BA498@epa.gov>

Accept-Language: en-US

Content-Language: en-US

X-MS-Has-Attach:

X-MS-TNEF-Correlator:

authentication-results: cox.net; dkim=none (message not signed)

header.d=none; cox.net; dmarc=none action=none header.from=epa.gov;

x-ms-exchange-messagesentrepresentingtype: 1

x-originating-ip: [2600:1003:b02c:ee55:d485:2a2f:a8f4:13da]

x-microsoft-exchange-diagnostics:

1;BN6PR09MB1346;7:jMoJ4Pbk4+9zAtq8R+nYluxWjnC2sXRk0bEiK0mro2/8bq2wNJ6nF1EOwbE0BqLcaw8a2pYz

x-forefront-antispam-report: SFV:SKI;SCL:-

1SFV:NSPM;SFS:(10019020)(6009001)(7916002)(39450400003)(189998001)(6116002)(102836003)(106

x-ms-office365-filtering-correlation-id: 04f04592-bb1b-4543-463e-08d464bc09e6

x-microsoft-antispam: UriScan;;BCL:0;PCL:0;RULEID:(22001);SRVR:BN6PR09MB1346;

x-microsoft-antispam-prvs:

<BN6PR09MB134628B792D336F5369BBF8FEE2C0@BN6PR09MB1346.namprd09.prod.outlook.com>

x-exchange-antispam-report-test: UriScan;;

x-exchange-antispam-report-cfa-test:

BCL:0;PCL:0;RULEID:(6040375)(601004)(2401047)(8121501046)(5005006)(10201501046)(3002001)(6

x-forefront-prvs: 0238AEEDB0

spamdiagnosticoutput: 1:99

spamdiagnosticmetadata: NSPM

Content-Type: multipart/alternative;

boundary="_000_2B472EDFE23844F7A5ECA69980427FE5epagov_"

MIME-Version: 1.0

X-OriginatorOrg: epa.gov

X-MS-Exchange-CrossTenant-originalarrivaltime: 06 Mar 2017 18:10:14.7704 (UTC)

X-MS-Exchange-CrossTenant-fromentityheader: Hosted

X-MS-Exchange-CrossTenant-id: 88b378b3-6748-4867-acf9-76aacbeca6a7
X-MS-Exchange-Transport-CrossTenantHeadersStamped: BN6PR09MB1346

To: marlae.schnare
From: Schnare, David
Sent: Mon 3/6/2017 6:10:14 PM
Subject: Fwd: Contact information

Personal Email/Ex. 6 Willis, Sharnett[Willis.Sharnett@epa.gov]

I mistyped Marlae's email address.

Subject: Contact information

Marlae,
If you need to contact me, Sharnett either knows where I or can find me. Here are the phone numbers:

Marlae -
Sharnett -

Personal Phone/Ex. 6

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: Flynn, Mike
Sent: Wed 3/8/2017 2:14:25 PM
Subject: Re: Chlorpyrifos One-Pager

David, I had konked out last night so just saw your message this morning. I'm a little behind on the back-n- forth on this. Will swing by

Mike Flynn
Acting Deputy Administrator
U.S. Environmental Protection Agency
(202) 564-4711

On Mar 7, 2017, at 10:41 PM, Schnare, David <schnare.david@epa.gov> wrote:

I'm furious about this. I placed complete trust in our staff and made a strong recommendation based on their briefing. Unless the Ag department is completely wrong in its presentation of the issue, this will do nothing but feed the views of those who believe the career staff is not to be trusted.

I hate going to bed this angry.

d

Sent from my iPhone

Begin forwarded message:

From: "Schnare, David" <schnare.david@epa.gov>
Date: March 7, 2017 at 10:28:41 PM EST
To: "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Cleland-Hamnett, Wendy" <Cleland-Hamnett.Wendy@epa.gov>
Cc: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Dravis, Samantha" <dravis.samantha@epa.gov>, "Brown, Byron" <brown.byron@epa.gov>
Subject: Fwd: Chlorpyrifos One-Pager

By noon Wednesday please provide an analysis of the attached memo from the Department of Agriculture, either admitting each statement or refuting it. I am not interested in further argument in support of the proposed finding. I want to know the facts, all the facts.

This memo raises deep concern regarding whether I and others were honestly briefed on this issue. I based my recommendations on those briefings. My confidence in both offices has need seriously reduced. I hope that is restored, based on whatever you

produce by noon.

dschnare

Sent from my iPhone

Begin forwarded message:

From: "Dravis, Samantha" <dravis.samantha@epa.gov>
Date: March 7, 2017 at 5:51:27 PM EST
To: "Schnare, David" <schnare.david@epa.gov>, "Brown, Byron" <brown.byron@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>
Subject: FW: Chlorpyrifos One-Pager

Making sure the three of you had this as well.

From: Schwab, Justin
Sent: Tuesday, March 7, 2017 4:04 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Fwd: Chlorpyrifos One-Pager

See attached, USDA's concerns re chlorpyrifos

Sent from my iPhone

Begin forwarded message:

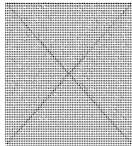
From: "Vaden, Stephen - OGC" <Stephen.Vaden@ogc.usda.gov>
Date: March 7, 2017 at 11:02:30 AM EST
To: "schwab.justin@epa.gov" <schwab.justin@epa.gov>
Subject: Chlorpyrifos One-Pager

Justin,

Attached, please find a brief document outlining USDA's concerns in bullet form. As always, I am happy to discuss any of the points or put your staff in contact with our wonderful career people. They and I are willing to assist

you in any way.

Stephen



Stephen Alexander Vaden

U.S. Department of Agriculture

Office of the General Counsel

**Senior Adviser to the Office of General
Counsel**

Whitten Building, Suite 107W

' 202-720-3351 (Voice)

<image002.png>

202-720-8666 (Fax)



stephen.vaden@ogc.usda.gov

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have

received this message in error, please notify the sender and delete the email immediately.

<Revised Chlorpyrifos Revocation Questions_March 7 final.docx>

To: Schnare, David[schnare.david@epa.gov]
Cc: Anita Bermudez[anita@WWEMA.org]
From: Vanessa Leiby
Sent: Tue 3/7/2017 3:03:16 PM
Subject: RE: Speaker Materials Request - WWEMA Washington Forum, March 22, 2017

Thanks Dave! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: **Personal Phone/Ex. 6**

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

From: Schnare, David [mailto:schnare.david@epa.gov]

Sent: Tuesday, March 07, 2017 9:54 AM

To: Vanessa Leiby

Cc: Anita Bermudez

Subject: RE: Speaker Materials Request - WWEMA Washington Forum, March 22, 2017

Per your request:

David

From: Vanessa Leiby [mailto:Vanessa@WWEMA.org]

Sent: Monday, March 6, 2017 11:21 AM

To: Schnare, David <schnare.david@epa.gov>

Cc: Anita Bermudez <anita@WWEMA.org>

Subject: Speaker Materials Request - WWEMA Washington Forum, March 22, 2017

Importance: High

Good morning Dave. I suspect you have been extremely busy with the new administrator, budget issues, and getting the EPA house in order. As we are approaching the Washington Forum, would you have a moment to review the speaker request below and to complete and send me the attached speaker form. Please let me know if I can provide any further assistance. We are looking forward to hearing from you. Vanessa

1) Meeting Location and Time:

March 22, 2017

9:00 – 9:30 a.m.

The Westin Georgetown

2350 M Street, NW

Washington, DC 20037

2) Please complete the attached speaker registration form and return it to me by 3/1/17 at vanessa@wwema.org

3) Please submit a headshot and one paragraph bio that we can use for the program by 3/1/17 to vanessa@wwema.org

4) Please let me know if you would like me to make any edits to your presentation description in the program by 3/1/17.

5) If you plan to use a PowerPoint presentation, please submit an electronic copy to vanessa@wwema.org by 3/15/17.

Thanks again and I look forward to working with you and the new Administration! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: **Personal Phone/Ex. 6**

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

From: Vanessa Leiby
Sent: Tuesday, February 14, 2017 10:48 AM
To: 'schnare.david@epa.gov'
Cc: Anita Bermudez
Subject: Confirmation to Speak at WWEMA Washington Forum, March 22, 2017
Importance: High

Hi Dave – it was great to hear your voice and briefly catch up this morning! I am very pleased that you will be able to speak at our 44th WWEMA Washington Forum on Wednesday, March 22. Please see the attached Preliminary Agenda for information about the timing of your presentation and other meeting and hotel logistics. I have not yet formally assigned timeslots but the session will run from 9:00 – 10:30 a.m. I would be honored if you would be able to open our meeting. Please see logistics and additional information requests, below:

1) Meeting Location and Time:

March 22, 2017

9:00 – 9:30 a.m.

The Westin Georgetown

2350 M Street, NW

Washington, DC 20037

- 2) Please complete the attached speaker registration form and return it to me by 3/1/17 at vanessa@wwema.org
- 3) Please submit a headshot and one paragraph bio that we can use for the program by 3/1/17 to vanessa@wwema.org
- 4) Please let me know if you would like me to make any edits to your presentation description in the program by 3/1/17.
- 5) If you plan to use a PowerPoint presentation, please submit an electronic copy to vanessa@wwema.org by 3/15/17.

Thanks again and I look forward to working with you and the new Administration! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: **Personal Phone/Ex. 6**

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

To: Schnare, David[schnare.david@epa.gov]
From: eopf-noreply@opm.gov
Sent: Tue 3/14/2017 3:37:13 PM
Subject: eOPF Notification: New Documents Have Been Added to Your Folder

Subject: New Documents Added

This email is to notify you that documents were added to your folder in the electronic Official Personnel File (eOPF) system.

Ex. 6

To view your document(s):

1. Log into your agency's eOPF using a government-secured computer.
2. Identify new document(s) by clicking on the "Create Date" column so that new document(s) are listed first.

If you have further questions about the addition of these documents, please contact your HR representative.

Agency: <https://eopf.nbc.gov/epa/>

261945

To: Marlae Schnare **Personal Email/Ex. 6**
From: Microsoft Outlook
Sent: Mon 3/6/2017 6:07:58 PM
Subject: Undeliverable: Contact information
Contact information

Delivery has failed to these recipients or groups:

Personal Email/Ex. 6

Your message couldn't be delivered. The Domain Name System (DNS) reported that the recipient's domain does not exist.

Contact the recipient by some other means (by phone, for example) and ask them to tell their email admin that it appears that their domain isn't properly registered at their domain registrar. Give them the error details shown below. It's likely that the recipient's email admin is the only one who can fix this problem.

For more information and tips to fix this issue see this article:
<http://go.microsoft.com/fwlink/?LinkId=389361>.

Diagnostic information for administrators:

Generating server: BN6PR09MB1346.namprd09.prod.outlook.com

mjschnare@cox.ner

Remote Server returned '550 5.4.310 DNS domain does not exist'

Original message headers:

DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=usepa.onmicrosoft.com; s=selector1-epa-gov; h=From:Date:Subject:Message-ID:Content-Type:MIME-Version; bh=HcVCdxdb8vcKAK18+DD0fobKyfHNOH9xfJR1dKj7urU=;

b=ac9LOq2qM3009izqsBSYy83YM/XuX+pb2t4AkaavmDL1SyT62mOG8Yy2+3IvhuRzP5viw5dWGHxVfbTsMi+sn7kb

Received: from BN6PR09MB1505.namprd09.prod.outlook.com (10.173.202.145) by BN6PR09MB1346.namprd09.prod.outlook.com (10.172.22.13) with Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_CBC_SHA384_P384) id 15.1.947.12; Mon, 6 Mar 2017 18:07:57 +0000

Received: from BN6PR09MB1505.namprd09.prod.outlook.com ([10.173.202.145]) by BN6PR09MB1505.namprd09.prod.outlook.com ([10.173.202.145]) with mapi id 15.01.0947.018; Mon, 6 Mar 2017 18:07:57 +0000

From: "Schnare, David" <schnare.david@epa.gov>
To: Marlae Schnare <mjschnare@cox.ner>, "Willis, Sharnett" <Willis.Sharnett@epa.gov>
Subject: Contact information

Thread-Topic: Contact information
Thread-Index: AQHS1qSVBDy41gn6E0m9ezuXQyqklQ==
Date: Mon, 6 Mar 2017 18:07:57 +0000
Message-ID: <E4FF0E2F-F5E3-45BC-BBF0-C9B4FA1BA498@epa.gov>
Accept-Language: en-US
Content-Language: en-US
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
authentication-results: cox.ner; dkim=none (message not signed)
header.d=none; cox.ner; dmarc=none action=none header.from=epa.gov;
x-ms-exchange-messagesentrepresentingtype: 1
x-originating-ip: [2600:1003:b02c:ee55:d485:2a2f:a8f4:13da]
x-microsoft-exchange-diagnostics:
1;BN6PR09MB1346;7:rpI3GSXvn/pz7rsnZuxnKNIObUd6OAi12GKu3HEOcWcETyVmlTxEAFfGgLTpsqVA1j6YtF7U
x-forefront-antispam-report: SFV:SKI;SCL:-
1SFV:NSPM;SFS:(10019020)(6009001)(7916002)(39450400003)(8936002)(221733001)(50986999)(5435
x-ms-office365-filtering-correlation-id: 18a0dbab-914c-4b45-45d3-08d464bbb810
x-microsoft-antispam: UriScan;;BCL:0;PCL:0;RULEID:(22001);SRVR:BN6PR09MB1346;
x-microsoft-antispam-prvs:
<BN6PR09MB1346B716B11FE002A3B99F67EE2C0@BN6PR09MB1346.namprd09.prod.outlook.com>
x-exchange-antispam-report-test: UriScan;;
x-exchange-antispam-report-cfa-test:
BCL:0;PCL:0;RULEID:(6040375)(601004)(2401047)(8121501046)(5005006)(10201501046)(3002001)(6
x-forefront-prvs: 0238AEEDB0
spamdiagnosticoutput: 1:99
spamdiagnosticmetadata: NSPM
Content-Type: text/plain; charset="us-ascii"
Content-ID: <F0492272E8C4D44C988883F4E70E704A@usepa.onmicrosoft.com>
Content-Transfer-Encoding: quoted-printable
MIME-Version: 1.0
X-OriginatorOrg: epa.gov
X-MS-Exchange-CrossTenant-originalarrivaltime: 06 Mar 2017 18:07:57.5506
(UTC)
X-MS-Exchange-CrossTenant-fromentityheader: Hosted
X-MS-Exchange-CrossTenant-id: 88b378b3-6748-4867-acf9-76aacbeca6a7
X-MS-Exchange-Transport-CrossTenantHeadersStamped: BN6PR09MB1346

To: Schnare, David[schnare.david@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Benton, Donald[benton.donald@epa.gov]
From: Flynn, Mike
Sent: Wed 3/8/2017 2:12:02 PM
Subject: Re: Checking in

Samantha, great - will be good to have you join us. Will have folks get this on your calendar.

Mike

Mike Flynn
Acting Deputy Administrator
U.S. Environmental Protection Agency
(202) 564-4711

> On Mar 8, 2017, at 6:58 AM, Schnare, David <schnare.david@epa.gov> wrote:

>

> Mike Flynn and I hold an afternoon meeting with selected AO staff to figure out what we need to get before the Administrator at the next morning's Chief of Staff meeting. You are welcome. The time of the meeting tends to bounce around between 3 and 4. Mike Flynn sets this up. I'm cc'ing him on this to ensure you are invited.

>

> D.

>

> -----Original Message-----

> From: Dravis, Samantha

> Sent: Wednesday, March 8, 2017 6:56 AM

> To: Benton, Donald <benton.donald@epa.gov>; Schnare, David <schnare.david@epa.gov>

> Subject: FW: Checking in

>

> Good morning gentlemen!

>

> I'm not sure what the 3pm meeting Shannon is referring to is, but from now on I would like to attend that going forward instead of Shannon. Could you forward me calendar invitations?

>

> Thank you!

>

> -----Original Message-----

> From: Kenny, Shannon

> Sent: Tuesday, March 7, 2017 5:40 PM

> To: Dravis, Samantha <dravis.samantha@epa.gov>

> Cc: Rees, Sarah <rees.sarah@epa.gov>

> Subject: Checking in

>

> Hi Samantha, I wanted to be sure you knew

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

>

Personal Matters/Ex. 6

>

> I attended the 3:00 daily meeting with David and Don today. We may want to talk more about that process and how to make it serve the Administrator better. It may also be good to chat about how to

make it serve you better in your AA role.

>

> Shannon

>

> Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: Dunham, Sarah
Sent: Wed 3/8/2017 7:37:30 PM
Subject: RE: CAFE Notice

Ok—if its necessary to have a program office contact, Bill Charmley would be the best contact.

From: Dunham, Sarah
Sent: Wednesday, March 08, 2017 2:23 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: CAFE Notice

I'm running someone down. (I had thought David Orlin from OGC had agreed to have his name listed if we needed to have an EPA name)

From: Schnare, David
Sent: Wednesday, March 08, 2017 2:09 PM
To: Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: CAFE Notice

Sarah:

I need the name of a person, presumably in OTAQ, who will be named as the contact in the CAFÉ FR Notice. I need this asap as I want to get this signed by the Administrator today. Can you get me someone's name immediately?

Dschnare

To: Schnare, David[schnare.david@epa.gov]
From: Chu, Ed
Sent: Tue 3/14/2017 3:34:29 PM
Subject: RE: Bravo zulu

David,

On behalf of everyone at Region 7, I want to officially welcome you to EPA! I look forward to meeting you in person soon. In the meantime, please feel free to call or email if you need anything from Region 7 – we stand ready to support you.

Edward H. Chu | Regional Administrator (Acting)

U.S. Environmental Protection Agency

Region 7 (Kansas, Missouri, Nebraska, Iowa & Nine Tribes)

(913) 551-7333

epa.gov | epa.gov/region7



From: Schnare, David
Sent: Monday, March 13, 2017 11:33 AM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>
Subject: Bravo zulu

For those of you with a Navy background, you can see in the subject line what I'm about to say.

Bravo Zulu (or BZ) is Navy slang for "well done."

I want to take just a moment of your time to thank all of you for the hard work you've done helping the Administrator get his agenda moved forward with dispatch. I'm encouraged by your willingness to help and your ability to help explain our complex job.

New folks are coming on board, men and women who will also need our help learning what we do and all the ways we can do it. I know you will help them as you have helped the transition team and the Administrator, his Chief of Staff and his Associate Administrator for Policy.

There will be many challenges over the next several months. New policy directions, new managers and new messages coming from within and surely from without. During this period of flux, I know you will keep your and your staff's focus on the task before us – protecting public health and welfare.

With every best wish,

David

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]
From: Hull, George
Sent: Wed 3/1/2017 7:01:20 PM
Subject: RE: Do you have any time today?

Great. See you at 4:30.

From: Schnare, David
Sent: Wednesday, March 01, 2017 2:01 PM
To: Hull, George <Hull.George@epa.gov>
Subject: RE: Do you have any time today?

4:30pm

From: Hull, George
Sent: Wednesday, March 1, 2017 1:14 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: Do you have any time today?

David,

I wanted to follow up on our hallway conversation. Let me know if there is a time that is convenient for me to come by. Thanks, George

To: Schnare, David[schnare.david@epa.gov]
Cc: Anita Bermudez[anita@WWEMA.org]
From: Vanessa Leiby
Sent: Wed 3/8/2017 2:03:04 PM
Subject: RE: Title to use for Washington Forum

Thanks! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: **Personal Phone/Ex. 6**

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

From: Schnare, David [mailto:schnare.david@epa.gov]

Sent: Wednesday, March 08, 2017 9:00 AM

To: Vanessa Leiby

Cc: Anita Bermudez

Subject: Re: Title to use for Washington Forum

Assistant

Sent from my iPhone

On Mar 8, 2017, at 8:59 AM, Vanessa Leiby <Vanessa@WWEMA.org> wrote:

Hi David – Sorry to bother you but I just want to confirm before we go to print which title you like us to use for the program, bio, etc. Assistant Deputy Administrator or Acting Deputy Administrator? Thanks! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: 240-678-4623

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

From: Schnare, David [<mailto:schnare.david@epa.gov>]

Sent: Tuesday, March 07, 2017 9:54 AM

To: Vanessa Leiby

Cc: Anita Bermudez

Subject: RE: Speaker Materials Request - WWEMA Washington Forum, March 22, 2017

Per your request:

David

From: Vanessa Leiby [mailto:Vanessa@WWEMA.org]
Sent: Monday, March 6, 2017 11:21 AM
To: Schnare, David <schnare.david@epa.gov>
Cc: Anita Bermudez <anita@WWEMA.org>
Subject: Speaker Materials Request - WWEMA Washington Forum, March 22, 2017
Importance: High

Good morning Dave. I suspect you have been extremely busy with the new administrator, budget issues, and getting the EPA house in order. As we are approaching the Washington Forum, would you have a moment to review the speaker request below and to complete and send me the attached speaker form. Please let me know if I can provide any further assistance. We are looking forward to hearing from you. Vanessa

1) Meeting Location and Time:

March 22, 2017

9:00 – 9:30 a.m.

The Westin Georgetown

2350 M Street, NW

Washington, DC 20037

2) Please complete the attached speaker registration form and return it to me by 3/1/17 at vanessa@wwema.org

- 3) Please submit a headshot and one paragraph bio that we can use for the program by 3/1/17 to vanessa@wwema.org
- 4) Please let me know if you would like me to make any edits to your presentation description in the program by 3/1/17.
- 5) If you plan to use a PowerPoint presentation, please submit an electronic copy to vanessa@wwema.org by 3/15/17.

Thanks again and I look forward to working with you and the new Administration! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: 240-678-4623

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

From: Vanessa Leiby

Sent: Tuesday, February 14, 2017 10:48 AM

To: 'schnare.david@epa.gov'

Cc: Anita Bermudez

Subject: Confirmation to Speak at WWEMA Washington Forum, March 22, 2017

Importance: High

Hi Dave – it was great to hear your voice and briefly catch up this morning! I am very pleased that you will be able to speak at our 44th WWEMA Washington Forum on Wednesday, March 22. Please see the attached Preliminary Agenda for information about the timing of your presentation and other meeting and hotel logistics. I have not yet formally assigned timeslots but the session will run from 9:00 – 10:30 a.m. I would be honored if you would be able to open our meeting. Please see logistics and additional information requests, below:

1) Meeting Location and Time:

March 22, 2017

9:00 – 9:30 a.m.

The Westin Georgetown

2350 M Street, NW

Washington, DC 20037

- 2) Please complete the attached speaker registration form and return it to me by 3/1/17 at vanessa@wwema.org
- 3) Please submit a headshot and one paragraph bio that we can use for the program by 3/1/17 to vanessa@wwema.org
- 4) Please let me know if you would like me to make any edits to your presentation description in the program by 3/1/17.
- 5) If you plan to use a PowerPoint presentation, please submit an electronic copy to vanessa@wwema.org by 3/15/17.

Thanks again and I look forward to working with you and the new Administration! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: 240-678-4623

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

To: Schnare, David[schnare.david@epa.gov]
From: Smith, Loren (OST)
Sent: Tue 3/14/2017 3:21:02 PM
Subject: David - plan re congressional rollout?

We would like to contact members of our oversight committees with a short statement on the joint notice, at the appropriate moment. Can you loop me in with your folks? Then we can reach out to WH as appropriate.

++++

Loren Smith

U.S. Department of Transportation

West Building – W85-115

loren.smith@dot.gov

202-430-2952

To: Schnare, David[schnare.david@epa.gov]
From: Thomasson, Russell (WAS-CAS)
Sent: Mon 3/13/2017 5:04:40 PM
Subject: Thanks

David, thanks for taking my call. I will have the Arconic rep reach out to you with some supporting materials after the announcement on Wednesday. Russ

Russell J. Thomasson
Executive Vice President
733 Tenth Street, NW, Suite 400
Washington, DC 20001
202.585.2554 (direct)
Personal Email/Ex. 6 (cell)
www.cassidy.com

CASSIDY&ASSOCIATES

This message contains information which may be confidential and privileged. Unless you are the intended recipient (or authorized to receive this message for the intended recipient), you may not use, copy, disseminate or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail, and delete the message. Thank you very much.

To: Schnare, David[schnare.david@epa.gov]
From: Bradford Frisby
Sent: Mon 3/6/2017 5:59:16 PM
Subject: contact

Hi David,

I had something important I wanted to discuss with you if you have about 5 minutes. Please call me at your convenience.

Regards,

Bradford

Bradford Frisby

Deputy General Counsel

National Lime Association

200 North Glebe Road, Suite 800

Arlington, Virginia 22203

(703) 566-4641

Fax: (703) 243-5489

Website www.lime.org

To: Schnare, David[schnare.david@epa.gov]
From: Patrick Davis
Sent: Wed 3/1/2017 6:56:59 PM
Subject: Perchlorate issue

David,

Received this from max Hamel. Is this on our radar ?

Patrick

Per our earlier discussion, after the election was told that EPA had prepared a draft Federal Register Notice (FRN) in preparation for their 2nd peer review meeting which includes proposed charge questions & proposed panel nominees for the peer review panel. Additionally, they drafted an MCLG report which uses the output of the draft BBDR (PBPk/PD) model to generate a potential perchlorate MCLGs for consideration by the 2d peer review panel. At this point, it is unclear whether or not this will be included in the FRN, although the original intent was to include it. Should make sure those don't get published to preserve your options.
Pardon the brevity, sent from my iPhone

To: Wood, Stephanie[Wood.Stephanie@epa.gov]; Schnare, David[schnare.david@epa.gov]; Ellison, Mardiko[Ellison.Mardiko@epa.gov]
From: Jenkins, Donna
Sent: Thur 3/16/2017 8:16:08 PM
Subject: RE: Purchase Card Approval for David Schnare

PLEASE CANCEL. Employee Resigned on Wednesday, March 15, 2017.

Thank you

From: Wood, Stephanie
Sent: Thursday, March 16, 2017 4:14 PM
To: Schnare, David <schnare.david@epa.gov>; Jenkins, Donna <Jenkins.Donna@epa.gov>; Ellison, Mardiko <Ellison.Mardiko@epa.gov>
Subject: Purchase Card Approval for David Schnare

Good day,

Attached please find your fully funded and processed SF-182 Training document. At this time your **authorized EPA Purchase Card holder is now permitted** to contact the service provider and enroll/pay for this development activity.

If you have any questions regarding this document please do not hesitate to contact the EPA Leadership Development Institute via the EPA e-mail box "Training Forms 182 HQ". Please direct the vendor to contact you should questions arise regarding the payment process.

Please maintain a copy of this document for your personal records. We look forward to assisting you in the future.

Stephanie R. Wood

Headquarters Training Officer

Policy, Planning and Training Division

Training Branch

Leadership Development Institute

EPA University

202-564-8341 (Office Number)

Wood.Stephanie@epa.gov

To: Munoz, Charles[munoz.charles@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Patrick Davis
Sent: Sat 3/11/2017 7:03:14 PM
Subject: Fwd: your resume

Personal Matters/Ex. 6

Charles and David,

Resume from **Personal Matters/Ex. 6** You must know **Personal Matters/Ex. 6** from transition and his work with interior and ESA. I think **Personal Matters/Ex. 6** would make a brilliant addition to our policy shop. He is NOT looking to go through Senate confirmation.

Patrick Davis

Pardon the brevity, sent from my iPhone

Begin forwarded message:

From: Greg Walcher <**Personal Email/Ex. 6**>
Date: March 11, 2017 at 11:07:00 AM MST
To: Patrick Davis <**Personal Email/Ex. 6**>
Subject: Re: your resume

Figured out how to send these from my phone. Attached is a short bio we use in the business, and the more formal resume, last page of which can be included or not, as needed.

Cheers.

Personal Matters/Ex. 6

On Mar 11, 2017 11:52 AM, **Personal Matters/Ex. 6** <**Personal Email/Ex. 6**> wrote:

Thank you. I also enjoyed the conversation tremendously, and appreciate your taking time. I'm in a conference today, but will send you the resume and bio when I get back to my computer this evening. And let's get together again soon, and often.
GW

On Mar 11, 2017 8:48 AM, "Patrick Davis" <**Personal Email/Ex. 6**> wrote:

Personal Matters/Ex. 6

Thanks for the time yesterday. I really enjoy visiting with you. You are a wealth of knowledge and experience. I looked for your resume on my computer this morning and could not find it. Will you please send it to me again?

Thanks,
Patrick Davis

To: Schnare, David[schnare.david@epa.gov]
From: Dunham, Sarah
Sent: Wed 3/8/2017 7:23:09 PM
Subject: RE: CAFE Notice

I'm running someone down. (I had thought David Orlin from OGC had agreed to have his name listed if we needed to have an EPA name)

From: Schnare, David
Sent: Wednesday, March 08, 2017 2:09 PM
To: Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: CAFE Notice

Sarah:

I need the name of a person, presumably in OTAQ, who will be named as the contact in the CAFÉ FR Notice. I need this asap as I want to get this signed by the Administrator today. Can you get me someone's name immediately?

Dschnare

To: Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Cleland-Hamnett, Wendy
Sent: Wed 3/15/2017 1:14:28 PM
Subject: FW: Glyphosate not classified as a carcinogen by ECHA

For awareness, the European Chemicals Agency lines up with Australia, Canada and our proposed approach on RoundUp.

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

From: Keigwin, Richard

Sent: Wednesday, March 15, 2017 8:35 AM

To: Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>; Wise, Louise <Wise.Louise@epa.gov>

Cc: Layne, Arnold <Layne.Arnold@epa.gov>; Strauss, Linda <Strauss.Linda@epa.gov>; Mosby, Jackie <Mosby.Jackie@epa.gov>; Overstreet, Anne <overstreet.anne@epa.gov>; Sisco, Debby <Sisco.Debby@epa.gov>; Dinkins, Darlene <Dinkins.Darlene@epa.gov>

Subject: Glyphosate not classified as a carcinogen by ECHA

<https://echa.europa.eu/-/glyphosate-not-classified-as-a-carcinogen-by-echa>

Rick Keigwin

Acting Director, Office of Pesticide Programs

US Environmental Protection Agency

To: Schnare, David[schnare.david@epa.gov]
From: Bromberg, Kevin L.
Sent: Thur 3/9/2017 6:51:22 PM
Subject: FW: 5:30 Schnare seminar
5:30 Schnare seminar

Hi – will be watching from our office – perhaps a few others too

Kevin

From: Bromberg, Kevin L.
Importance: Normal
Subject: 5:30 Schnare seminar
Start Date/Time: Mon 3/13/2017 9:00:00 PM
End Date/Time: Mon 3/13/2017 9:30:00 PM

To: Schnare, David[schnare.david@epa.gov]
From: Grantham, Nancy
Sent: Wed 3/8/2017 1:03:29 PM
Subject: tijuana sewage spill in the clips -- fyi - in case it comes up -- EPA's involvement -- john konkus has as well -- thanks ng

“The International Boundary and Water Commission (IBWC) is convening a committee that is investigating the recent sewage spill in Tijuana. EPA will assist IBWC with its investigation. EPA provides funding through the North American Development Bank for wastewater infrastructure in Tijuana to minimize breakdowns in their system and prevent adverse water quality impacts to the U.S., but the repair to the sewer that resulted in the recent spill was not part of a project funded by EPA.”

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

To: Schnare, David[schnare.david@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Packard, Elise[Packard.Elise@epa.gov]
From: Neugeboren, Steven
Sent: Wed 3/8/2017 7:09:06 PM
Subject: RE: Pebble mine

Thanks David. I/Mike will forward this on to the relevant folks and we can let you know if we have any followup questions.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Schnare, David
Sent: Wednesday, March 08, 2017 10:46 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>
Subject: Pebble mine

The Administrator has concluded that we have failed to give Pebble sufficient due process. He agrees we should settle this matter and should ask the court for more time, if necessary, to conclude a settlement.

The core question was whether we would rely on the preliminary determination after the conclusion of the 404 permit review. Because the 404 process will generate new information, we WILL NOT rely on the preliminary determination. Rather, we will follow the normal process. No doubt the documents prepared for the preliminary determination may be helpful, but they may also need to be revised.

In any case, the Administrator wants this settled rapidly and with this one change to our settlement position. If you have questions, please contact me.

dschnare

To: Schnare, David[schnare.david@epa.gov]
From: Flynn, Mike
Sent: Tue 3/14/2017 3:19:51 PM
Subject: Re: I'm telecommuting today

Got it - thanks

Mike Flynn
Acting Deputy Administrator
U.S. Environmental Protection Agency
(202) 564-4711

> On Mar 14, 2017, at 10:45 AM, Schnare, David <schnare.david@epa.gov> wrote:
>
>
>
> Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: Dabbs, Brian
Sent: Wed 3/15/2017 1:06:18 PM
Subject: Title at EPA? [WARNING: DKIM validation failed]

Hi David. I'm a reporter with Bloomberg BNA.

If you don't mind me asking, do you have a formal title at the agency yet? You do plan to stay on board for the foreseeable future, correct?

Thanks much.

Brian Dabbs

Reporter

Bloomberg BNA

Direct: 7033413746

Mobile: 4103532509

bdabbs@bna.com

To: Schnare, David[schnare.david@epa.gov]
Cc: Gordon, Rob[Rob.Gordon@mail.house.gov]; Santini, Christopher[Christopher.Santini@mail.house.gov]
From: Richardson, RobinH
Sent: Thur 3/9/2017 6:45:05 PM
Subject: Re: Gold King Mine

Thank you David!

Robin H Richardson
PDAA, EPA/OCIR
(202) 564-3358 (desk)
(703) 581-5814 (cell)
richardson.robinh@epa.gov

On Mar 9, 2017, at 1:30 PM, Schnare, David <schnare.david@epa.gov> wrote:

Robin:

I will brief you on this after my return from the meeting. Your address contained a typo so you did not receive the original email.

dschnare

From: Gordon, Rob [<mailto:Rob.Gordon@mail.house.gov>]
Sent: Thursday, March 9, 2017 12:31 PM
To: 'Richardson.Robin@epa.gov' <Richardson.Robin@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>; Santini, Christopher <Christopher.Santini@mail.house.gov>
Subject: Gold King Mine

Robin:

We would like to advise David Schnare of Committee oversight on Gold King Mine issues this Friday at 9:00am. We are located in the O'Neill House Office Building. After clearing

security at O'Neill visitors need to be escorted. Our clerk, Wes Gwinn, can be reached at 202.225.7749 when visitors arrive in the lobby.

Best,

Rob Gordon

Staff Director

Subcommittee on Oversight & Investigations

Senior Advisor for Endangered Species

House Committee on Natural Resources

Direct: 202.226.4630

To: Schnare, David[schnare.david@epa.gov]; Jackson, Ryan
(Inhofe)[Ryan_Jackson@inhofe.senate.gov]
From: Konkus, John
Sent: Tue 2/28/2017 1:29:40 PM
Subject: Draft Farm Bureau Release
EPA Administrator Pruitt Speaks at Farm Bureau Advocacy Conference.docx

The Farm Bureau put out a media advisory last night announcing the Administrator would be speaking today at 4pm. They will resend the advisory with a new time once we have settled on one. Right now I'm operating off of a 3pm time. Please let me know ASAP if that works. We want to give media enough time to plan their coverage.

Regardless of coverage, we will have still and video cameras at the speech. Attached is the draft release to send after the speech. We'll tweak the quotes based off of what he actually says of course. The crowd here is going to VERY enthusiastic, so the optics will be prime for us to hit a homerun.

This event is important because it will help us carry the WOTUS message through the next 24-48 hours which provides everyone cover to work on other things.

DRAFT EPA Administrator Pruitt Speaks at Farm Bureau Advocacy Conference

Less than an hour after joining President Trump at the White House for the announcement of the Executive Order to reconsider the controversial Waters of the United States rule, Environmental Protection Agency Administrator Scott Pruitt spoke to nearly 1,000 participants of the American Farm Bureau Federation's 2017 Advocacy Conference at National Harbor, MD, just outside of Washington D.C.

"The President has directed the EPA and the Army Corps of Engineers to not only reconsider the Waters of the U.S. rule, but has provided clarity on how to apply the Clean Water Act. This action preserves a federal role to protect the nation's water quality and it also restores States' role," Administrator Pruitt said in his remarks.

"American farmers, ranchers and landowners already spend \$1.7 billion a year on wetlands permits. No one wants clean water and clean air as much as farmers and ranchers. Not only is a healthy environment important to their livelihoods, it's the same water and air their children and family breath and drink," Administrator Pruitt continued.

"The actions taken by this Administration today, and what we've done at EPA over the past week in office signals a new beginning with our partners like the American Farm Bureau Federation," Administrator Pruitt concluded.

INSERT STILL PHOTO

INSTERT VIDEO CLIPS

Social media:

Administrator Tweet with photo: Reconsideration of #WOTUS rule enthusiastically received at @FarmBureau conf. Very glad I could bring you the good news this afternoon!

EPA Tweet: Administrator @EPAScottPruitt addressed the Farm Bureau today where he carried the news that EPA will reconsider the #WOTUS rule.

EPA Facebook: Cut and paste press release with photo.

###

To: Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Kavlock, Robert[Kavlock.Robert@epa.gov]; Kaplan, Robert[kaplan.robert@epa.gov]; Rodrigues, Cecil[rodrigues.cecil@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Shapiro, Mike
Sent: Fri 3/10/2017 11:03:36 PM
Subject: FW: EPA's Point of use device policy

Colleagues,

Please see the forwarded message below from David Schnare. David and Ryan have asked OW to lead the development of a policy framework for the use of point of use filters within EPA's drinking water program. The framework is to address this issue for a broad set of contaminants, including lead. I have asked Peter Grevatt to lead this effort for OW, and he will be reaching out to your organizations with some initial thoughts at the beginning of next week. Given the very expedited time frame, Peter will be looking for senior level participation from each of your organizations. Thanks, and we look forward to working with your folks on this.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Schnare, David
Sent: Thursday, March 09, 2017 3:32 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>

Cc: Brown, Byron <brown.byron@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Kaplan, Robert <kaplan.robert@epa.gov>; Grevatt, Peter <Grevatt.Peter@epa.gov>
Subject: EPA's Point of use device policy

Mike:

The problems we have confronted in Flint and now in East Chicago have the obvious potential to become nationwide. Bills have been introduced regarding lead service lines and some cities have taken independent action to address this issue.

There has been directed use of “point of use” devices, such as filters placed on kitchen taps, sometimes at the Agency’s suggestion, sometimes under a court order, and other times at state discretion. The short and long-term implications of POU solutions have not been fully and adequately examined recently and we need to do that.

I have discussed this with Chief of Staff Ryan Jackson and based on that discussion, OW is to take the lead in preparing a thorough analysis, including recommendations, on use of point of use device policy for the Agency. You may cast this in the context of the lead problem, but the policy could often reflect a broader spectrum of potential contamination problems. Please address both.

Time is of the essence on this matter, so please let me know what schedule you will be on bringing forth a policy statement.

Thank you,

d.

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]
From: Cleland-Hamnett, Wendy
Sent: Wed 3/8/2017 6:58:36 PM
Subject: RE: 2:00 Possible?

Will head over. What's your room number?

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

From: Schnare, David
Sent: Wednesday, March 08, 2017 1:52 PM
To: Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>
Subject: Re: 2:00 Possible?

Yep

Sent from my iPhone

On Mar 8, 2017, at 1:50 PM, Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov> wrote:

While I was out at meetings, my 1:00 was moved to 3.

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

To: Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]
From: Brown, Byron
Sent: Tue 3/7/2017 2:50:34 PM
Subject: RE: Rmp
[17-000-5451.pdf](#)

Here is the petition for reconsideration.

-----Original Message-----

From: Brown, Byron
Sent: Monday, March 6, 2017 6:44 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>
Subject: RE: Rmp

I spoke to the air law attorneys in OGC who work on this rule. Section 307 of the Clean Air Act imposes some additional procedures for rulemaking under the Clean Air Act beyond those under the Administrative Procedure Act for other rules.

However, section 307 provides authority to reconsider rules, so long as the petitioner raises issues that could not have been raised during the comment period, and to stay the effectiveness of a rule for up to 3 months during the reconsideration process. OGC is analyzing the petition for reconsideration and looking into the question of whether the stay could be triggered just by acting on the petition for reconsideration or whether we would have to publish notice in the FR, as well as some other procedural questions.

There is authority under section 307 to extend the effective date, but OGC advises **Attorney-Client/Ex. 5**

Attorney-Client/Ex. 5

I have also asked Brian Hope for a copy of the petition and will send to Samantha when I receive it.

-----Original Message-----

From: Jackson, Ryan
Sent: Monday, March 6, 2017 11:26 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: Re: Rmp

I tend to agree and believe we received a petition for reconsideration February 28. Brian hope has a copy at OEX.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

> On Mar 6, 2017, at 9:21 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

>

> The RMP implementation date is March 21st because of the Preibus memo (it will go effective on March 21st). We need to grant an administrative stay for a period of 60 or 90 days, which will provide certainty to companies that they do not have to comply with these deadlines by March 21st. In the short term, we

should grant this stay.

>

> In coming weeks, we will likely receive a petition for reconsideration, which will allow us to more permanently pull back the rule and go through a reconsideration process.

>

> The Obama DHS put out something during inter-agency review of this rule saying that having facilities share this type info would be "precedent-setting." This rule has raised numerous security concerns and it's something I believe we should take a hard second look at.

>

> I am copying in Byron and David, in case they have additional thoughts.

>

> -----Original Message-----

> From: Jackson, Ryan

> Sent: Monday, March 6, 2017 7:13 AM

> To: Dravis, Samantha <dravis.samantha@epa.gov>

> Subject: Rmp

>

> We have a petition in to ask to issue an administrative stay of the rmp final rule. We need to determine our next steps on that. Eager to get your thoughts. Feb 28 petition.

>

> Ryan Jackson

> Chief of Staff

> U.S. EPA

> (202) 564-6999

Thu Mar 02 12:57:00 EST 2017
Pruitt.Scott@epamail.epa.gov
Fw: RMP Coalition Petition for Reconsideration - Docket No. EPA-HQ-OEM-0725
To: CMS.OEX@epamail.epa.gov

From: Karcz, Melissa <melissa.karcz@hoganlovells.com> on behalf of Savage, Justin A. <justin.savage@hoganlovells.com>
Sent: Tuesday, February 28, 2017 5:20 PM
To: Pruitt, Scott; Flynn, Mike; Reeder, John; Breen, Barry; Minoli, Kevin
Cc: Savage, Justin A.; Ward, Erin H.
Subject: RMP Coalition Petition for Reconsideration - Docket No. EPA-HQ-OEM-0725

On behalf of Justin Savage of Hogan Lovells, please find attached a Petition for Reconsideration and Stay in the EPA docket noted above. A hard copy will follow by U.S. Mail. Please contact Mr. Savage, who has been copied on this e-mail, with any questions regarding the attached cover letter and petition.

Best,
Melissa Karcz

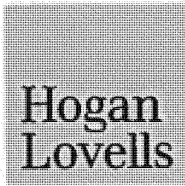
Melissa Karcz
Assistant to Justin Savage

Hogan Lovells US LLP	
Columbia Square	
555 Thirteenth Street, NW	
Washington, DC 20004	
Tel:	+1 202 637 5600
Direct:	+1 202 637 7173
Fax:	+1 202 637 5910
E-mail:	melissa.karcz@hoganlovells.com
www.hoganlovells.com	

Please consider the environment before printing this e-mail.

About Hogan Lovells
Hogan Lovells is an international legal practice that includes Hogan Lovells US LLP and Hogan Lovells International LLP. For more information, see www.hoganlovells.com.

CONFIDENTIALITY. This email and any attachments are confidential, except where the email states it can be disclosed; it may also be privileged. If received in error, please do not disclose the contents to anyone, but notify the sender by return email and delete this email (and any attachments) from your system.



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

February 28, 2017

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

**RE: Petition for Reconsideration and Request for Agency Stay Pending
Reconsideration and Judicial Review of Final Rule entitled *Accidental Release
Prevention Requirements: Risk Management Programs Under the Clean Air Act***

Dear Administrator Pruitt:

Please find enclosed a petition for reconsideration and request for stay for the U.S. Environmental Protection Agency's final rule, *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, Section 112(r)(7), 82 Fed. Reg. 4594, published in the Federal Register on January 13, 2017. This petition and request is filed on behalf of the RMP Coalition, consisting of the American Chemistry Council, the American Forest & Paper Association, the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the Chamber of Commerce of the United States of America, the National Association of Manufacturers, and the Utility Air Regulatory Group.

Please contact me with any questions you may have.

Sincerely,

Justin Savage

Partner
justin.savage@hoganlovells.com
D 202.637.5558

cc: Michael Flynn, Acting Deputy Administrator, EPA
John Reeder, Acting Chief of Staff, EPA
Barry Breen, Acting Assistant Administrator, EPA Office of Land and Emergency
Management

Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia. "Hogan Lovells" is an international legal practice that includes Hogan Lovells US LLP and Hogan Lovells International LLP, with offices in: Alicante Amsterdam Baltimore Beijing Brussels Caracas Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hanoi Ho Chi Minh City Hong Kong Houston Johannesburg London Los Angeles Luxembourg Madrid Mexico City Miami Milan Minneapolis Monterrey Moscow Munich New York Northern Virginia Paris Perth Philadelphia Rio de Janeiro Rome San Francisco São Paulo Shanghai Silicon Valley Singapore Sydney Tokyo Ulaanbaatar Warsaw Washington DC Associated offices: Budapest Jakarta Shanghai FTZ Zagreb. Business Service Centers: Johannesburg Louisville Legal Service Center Birmingham. For more information see www.hoganlovells.com

\\DC - 029016\\000012 - 10055186 v1

ED_001612_00028868-00002

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In re: Accidental Release Prevention) Docket No. EPA-HQ-OEM-0725
Requirements: Risk Management Programs)
Under the Clean Air Act)

PETITION FOR RECONSIDERATION AND STAY

Pursuant to Section 307(d)(7)(B) of the Clean Air Act (“CAA” or the “Act”)¹ and Sections 553 and 705 of the Administrative Procedure Act (the “APA”),² the American Chemistry Council (“ACC”), the American Forest & Paper Association (“AF&PA”), the American Fuel & Petrochemical Manufacturers (“AFPM”), the American Petroleum Institute (“API”), the Chamber of Commerce of the United States of America (the “Chamber”), the National Association of Manufacturers (“NAM”), and the Utility Air Regulatory Group (“UARG”) (collectively the “Coalition”) hereby petition the Administrator of the U.S. Environmental Protection Agency (“EPA” or the “Agency”) to reconsider and rescind its final rule entitled *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 82 Fed. Reg. 4594 (Jan. 13, 2017) (“RMP rulemaking” or “Final Rule”), and to stay the effective date of the Final Rule.³

The Coalition shares EPA's goal of promoting process safety. EPA's data shows that the pre-existing RMP regulation promoted safety, with a significant decline in the rate of accidental releases and incidents in the last twenty years. Unfortunately, the Final Rule undermines safety, creates significant security risks, and does nothing to further prevent criminal acts that threaten facilities, such as the sabotage that led to the tragedy in West, Texas. We stand ready to work

¹ 42 U.S.C. § 7407. EPA promulgated the Final Rule under its authority in Section 112(r) of the CAA to issue rules to prevent, detect, and respond to accidental releases of regulated substances. CAA Section 112(r)(7)(E) provides that regulations or requirements under that subsection are to “be treated as a standard in effect under [CAA Section 112] subsection (d),” which in turn are subject to the rulemaking and review procedures of Section 307(d). Thus, rulemaking and petition requirements of Section 307(d) apply to regulations issued under Section 112(r).

5 U.S.C. §§ 553(e), 705.

³ Due to the imminent compliance deadlines for certain requirements in the RMP Rule, the Coalition submits this initial petition today and reserves the right to supplement with additional material.

with EPA, OSHA and other federal stakeholders to find ways to improve chemical process safety, assist local emergency responders in responding to accident releases, and safeguard the communities living around our member companies' facilities.

The objections raised in this petition were either impracticable to raise during the comment period or arose subsequent to the end of the comment period and are of central relevance to the Final Rule. Section 307(d)(7)(B) of the CAA thus requires EPA to “convene a proceeding for reconsideration of the rule” and impart all the procedural rights that “would have been afforded had the information been available at the time the rule was proposed.”⁴

The Coalition submits this Petition on the grounds that the Final Rule was procedurally deficient so as to deprive commenters of effective notice and opportunity to comment; that circumstances changed—and undermined the factual predicate for the rule—when the comment period was nearly over such that it was impracticable to comment on how those circumstances impacted EPA’s proposed provisions; and that EPA introduced new provisions or rationales in the Final Rule for which commenters had no notice and which were not a logical outgrowth from what was proposed.

An administrative stay is appropriate and necessary while the Agency considers and addresses the numerous flaws in the Final Rule. Under Section 307(d) of the Act, EPA may grant a 90-day stay pending reconsideration, and we respectfully request that it do so. The Coalition also requests a stay under Section 705 of the APA pending resolution of the petition for review that the Coalition is filing in the U.S. Court of Appeals for the D.C. Circuit challenging the lawfulness of the Final Rule. A stay under APA Section 705 is not subject to the three month limitation that restricts stays under CAA Section 307(d) while petitions for reconsideration are pending, and may be issued by EPA while judicial review is pending if “justice so requires.” EPA and the courts have determined that “justice so requires” a stay under APA Section 705 where the party filing the petition for review is likely to succeed on the merits, the party will incur irreparable harm without a stay, other parties will not be harmed by staying the rule, and it is in the public interest to stay the effective date of the rule.

Justice so requires a stay here. The Coalition is likely to prevail on the merits of its challenges to the Final Rule due to its numerous procedural and substantive flaws. Staying the Final Rule will prevent irreparable harm to the Coalition’s member companies and will serve the public interest. The Final Rule raises *significant security concerns* and compliance issues that will cause irreparable harm to the Coalition members. The Final Rule, for example, compels facilities to make available sensitive information about covered processes that could expose vulnerabilities to terrorists and others who may target refineries, chemical plants and other facilities. Certain provisions, such as the requirement to audit “each covered process” in a facility’s compliance audit, impose costly and burdensome obligations on facilities immediately upon the Final Rule becoming effective. The Final Rule should be stayed to grant EPA, the Department of Homeland Security (“DHS”), the Federal Bureau of Investigation (“FBI”), and other relevant agencies the opportunity to engage with stakeholders to discuss appropriate

⁴ 42 U.S.C. § 7607(d)(7)(B).

protections to avert potential security risks. Because of imminent deadlines in the rule, the Coalition requests that EPA act as expeditiously as possible.

BACKGROUND

In the wake of the 2013 ammonium nitrate explosion at a fertilizer plant in West, Texas, President Obama issued Executive Order 13650 directing EPA, the Occupational Safety and Health Administration (“OSHA”), and DHS, in connection with other agencies, to collaborate in order to consider changes that could be made to prevent future similar incidents.⁵ Executive Order 13650 required EPA to “review the chemical hazards covered by the RMP . . . and determine if the RMP . . . can and should be expanded to address additional regulated substances and types of hazards.”⁶ Once such additional regulated substances and types of hazards were identified, EPA was directed to “develop a plan, including a timeline and resource requirements, to expand, implement, and enforce the RMP . . . in a manner that addresses the additional regulated substances and types of hazards.”⁷

EPA accordingly issued a Request for Information in July 2014 and subsequently published a proposed rule, entitled *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 81 Fed. Reg. 13,638 (Mar. 14, 2016) (“Proposed Rule”), to amend its RMP regulations on March 14, 2016.

Though ostensibly intended to address the Executive Order directive and the West, Texas explosion, EPA instead used this opportunity to significantly expand its authority and increase the burden of the RMP requirements on regulated industries without squarely addressing the conditions giving rise to the West, Texas explosion. For example, the Proposed Rule included provisions that would require facilities use third parties to conduct compliance audits after any reportable release or when an implementing agency required it due to “substantial noncompliance.” In connection with this requirement, EPA proposed to severely limit who might

⁵ The government has since determined that the explosion was the result of an intentional criminal act rather than an accidental release. See ATF Announces \$50,000 Reward in West, Texas Fatality Fire, (May 11, 2016), available at <https://www.atf.gov/news/pr/atf-announces-50000-reward-west-texas-fatality-fire>.

⁶ Exec. Order No. 13,650; 78 Fed. Reg. 48,029, *Improving Chemical Facility Safety and Security* (Aug. 1, 2013) (emphasis added). Notably, ammonium nitrate is not a covered substance under the RMP Final Rule. See Final Rule, 82 Fed. Reg. 4602.

⁷ *Id.*; see also Office of the Press Secretary, White House, Fact Sheet: Executive Order on Improving Chemical Facility Safety and Security (Aug. 1, 2013), available at <https://obamawhitehouse.archives.gov/the-press-office/2013/08/01/fact-sheet-executive-order-improving-chemical-facility-safety-and-security> (“Today, the President signed an Executive Order to improve the safety and security of chemical facilities and reduce the risks of hazardous chemicals to workers and communities. Chemicals and the facilities that manufacture, store, distribute and use them are essential to our economy. However, incidents such as the devastating explosion at a fertilizer plant in West, Texas in April are tragic reminders that the handling and storage of chemicals present serious risks that must be addressed.”).

be considered an independent and competent “third-party.” EPA also took the opportunity to impose numerous requirements on the audit itself that would increase the burden on affected facilities without any demonstrated safety benefit. For example, third-party audits would require having a licensed professional engineer on the audit team, retaining all draft audit reports, submitting draft and final audit reports to the implementing agency and the Board of Directors for the company, and generating a schedule for addressing all deficiencies identified in the audit report to be submitted to the implementing agency with a certification from a director of the company. Furthermore, neither the audit reports nor any “related records” were to be entitled to the protections of attorney-client privilege.

EPA also proposed to require safer technology alternatives analysis (“STAA”) as part of the process hazard analysis (“PHA”) for Program 3 facilities in certain NAICS code industries. Conducting an STAA would require these facilities to assess during the PHA whether any inherently safer technologies (“IST”) or inherently safer designs (“ISD”) might be available throughout the entirety of each covered process. For any IST or ISD identified, the facility would be required to conduct a feasibility analysis to determine whether the alternative could practicably be implemented. The Proposed Rule only vaguely alluded to how a facility might conduct such an analysis, without defining the relevant terms or adequately addressing how EPA might evaluate these analyses.

The Proposed Rule also addressed emergency response and disclosure obligations to local emergency planning committees (“LEPCs”), emergency responders, and the public. Among these provisions were separate but overlapping requirements for disclosing specific types of information to LEPCs and to the public. Facilities would be obligated to release extensive, highly sensitive, and detailed emergency response information—including STAA reports, compliance audit reports, accident histories, and incident investigation reports—to LEPCs upon request. EPA also proposed that information, including accident histories, be made readily available to the public at all times.

EPA’s Proposed Rule was bereft of the basic details, diligent analysis, and procedural safeguards necessary for a major rulemaking. The Proposed Rule provided many questions but few answer on how to approach each topic and whether EPA should consider alternatives. As a result, the text read more like an advanced notice of proposed rulemaking than a proposed rule.

In the Proposed Rule, EPA failed to provide a rationale for certain changes. In the case of extending compliance audits to “each covered process,” EPA not only failed to provide a rationale for the change but failed to even identify it as a proposed change to the regulatory text. More strikingly, EPA failed to conduct a proper cost-benefit analysis, declining to apportion benefits to particular provisions in the Proposed Rule or indeed even attempt to identify or quantify the expected benefits. Instead, EPA simply averred that it expected that some amount of the calculated costs of hazardous chemical accidents would be avoided due the proposed revisions. In describing each particular provision, EPA failed to connect the rationale of each provision to the costs and benefits of the proposal, much less consider costs or benefits of each provision at all. Finally, though OMB recommended a 90-day comment period, EPA allowed only 60 days to comment and refused to grant any of the many requests for an extension.

In its rush to finalize the rule before the new administration took office, EPA gave short shrift to the procedures mandated by the CAA and APA for promulgating new regulations. For example, EPA is required by statute to take the Proposed Rule's impact on small businesses into account through the Small Business Regulatory Enforcement Fairness Act ("SBREFA") process. However, EPA sent the Proposed Rule to the Office of Management and Budget ("OMB") for review just two weeks after EPA received the Small Business Advocacy Review ("SBAR") report, affording little time for EPA to thoughtfully consider and respond to the small businesses' concerns. This quick turnaround to OMB suggests that the Proposed Rule was already finalized when the SBAR report was issued. Moreover, EPA failed to provide for public comment supporting evidence for its proposed provisions. When EPA published its Proposed Rule, numerous documents were missing from the regulatory docket that EPA claimed it relied on, such as safety data from jurisdictions that require IST.

The comment period closed on May 13, 2016, despite multiple requests from Coalition members and others that EPA extend the comment period. After the close of the comment period, EPA added more than 100 new documents to the docket, several of which EPA cited to support its position on core provisions of the Final Rule, including the STAA and third-party audit provisions. Because the comment period had already closed, affected parties were denied the opportunity to review and provide informed comment on the additional materials EPA used to form its Proposed Rule. EPA signed the Final Rule on December 21, 2016, and published it on January 13, 2017, exactly one week before the inauguration of a new administration. The Final Rule goes into effect on March 21, 2017.

ISSUES MERITING RECONSIDERATION

EPA should reconsider its RMP Final Rule. Numerous procedural deficiencies deprived the public of a full and fair opportunity to comment. Among other shortcomings, EPA's comment period did not allow for thoughtful consideration of the many open-ended questions and technical regulatory provisions put forth in connection with the Proposed Rule. EPA significantly changed the Final Rule's required disclosures to LEPCs and the public in a manner that could not be anticipated from the proposed rule and threatens continued security of facilities. EPA also failed to conduct an adequate assessment of the costs and benefits of the various provisions of its proposed or Final Rule, as required by *Michigan v. EPA*⁸ and Executive Order 13563, such that it could not demonstrate that the benefits exceeded the expected costs for any of its proposed requirements. EPA also failed to provide a rationale for its new requirement that compliance audits address "each covered process," preventing the public from being able to comment on the data and policy reasons underpinning this substantial revision to the RMP requirements.⁹ Finally, data and documents supporting EPA's third-party audit and STAA

⁸ 135 S. Ct. 2699 (2015).

⁹ See AFPM, Comment on EPA's Proposed Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) (EPA-HQ-OEM-2015-0725), Docket # EPA-HQ-OEM-2015-0725-0579 and EPA-HQ-OEM-2015-0725-0580, at 39-42 (May 13, 2016) ("AFPM Comments"); API, Comments of the American Petroleum Institute on EPA Docket ID No EPA-HQ-OEM-2015-0725 Accidental Release Prevention Requirements: Risk

requirements were either added to the docket too late to practicably comment on the Agency's underlying support or are not publicly available at all. In accordance with the CAA, EPA therefore must reconsider its RMP Final Rule and remedy these procedural defects by providing adequate notice and opportunity to comment on the provisions, policy rationales, granular cost-benefit analyses of each new regulatory requirement, and record support it intends to rely on for any final rule.

In addition to EPA's failures and omissions that rendered the rulemaking process deficient, the revelation two days prior to the end of the comment period that the West, Texas incident was a criminal act caused by an intentionally set fire changed the circumstances that prompted the Executive Order that resulted in this rulemaking. It was impracticable for commenters to account for these changed circumstances in time to address them in their comments. EPA should reconsider the RMP regulations given this new information, potentially emphasizing limited and narrowly tailored information disclosures with protective procedures and improvements to facility security, rather than implementing onerous procedural requirements that are unlikely to lead to greater public safety and may in fact jeopardize it.

I. The Numerous Procedural Flaws in the RMP Rulemaking Precluded Effective Notice and Comment

Multiple procedural deficiencies in EPA's RMP rulemaking prevented Coalition members from being able to comment effectively on the provisions of and support for EPA's Final Rule. Because of these flaws, the Final Rule should be reconsidered.

A. New LEPC Disclosure Requirements Pose Significant Security Risks

In the Final Rule, EPA introduced a new provision for disclosures to LEPCs, requiring facilities to provide information that could severely compromise security. Had EPA proposed this broad requirement to allow LEPCs access to any sensitive information they deemed "relevant" for emergency planning, including information about the security vulnerabilities associated with a facility's hazardous substances, Coalition members would have raised strenuous objection to such unfettered disclosure and recommended measures to insure proper access and public safety. Instead, EPA included broad LEPC disclosure requirements only in the Final Rule, precluding public input on these provisions. In light of the unjustified and unanticipated expansion of LEPC disclosure requirements, EPA should reconsider disclosure obligations in the Final Rule.

Without notice to the stakeholders, the Final Rule drastically expanded the scope of information subject to LEPC disclosure. The Proposed Rule included a list of specific material that facilities would be required to disclose to LEPCs upon request.¹⁰ Coalition members opposed this disclosure of unnecessary and potentially sensitive information as a whole but

Management Programs Under the Clean Air Act, Proposed Rule, Docket # EPA-HQ-OEM-2015-0725-0536, at 14 (May 13, 2016) ("API Comments").

¹⁰ Proposed Rule, 81 Fed. Reg. at 13,711-12.

generally focused their objections on disclosure of one or more particular types of information.¹¹ However, in the Final Rule, EPA changed course: it replaced the delimited list of categories of information facilities had to disclose to an LEPC upon request with a broad requirement to provide “any other information that local emergency planning and response organizations identify as relevant to local emergency planning” upon request by an LEPC.¹² This new requirement gives nearly unfettered discretion to an LEPC to request any information it thinks might be helpful. Notably, where the Proposed Rule only required facilities to provide summaries of information on hazardous chemicals—itsself objectionable on security grounds—the Final Rule requires facilities to release any relevant information that an LEPC might request, potentially including full documents with extensive details of security vulnerabilities. Against this nearly unfettered discretion, EPA did not provide a facility owner or operator any authorization to refuse to provide requested information on security grounds. In fact, by moving the disclosure requirement from its own provision to a subsection of the “Emergency response coordination activities” provision, EPA also eliminated the CBI and classified information protections of the Proposed Rule. EPA also did not provide any limits or protections on the disclosure of information by LEPCs to the public.

EPA’s initial proposal—an enumerated list of specific information to disclose to an LEPC on request—did not provide notice that EPA might alter its requirement in the Final Rule to allow an LEPC to request any information it wants. If EPA had given any indication that it would finalize such an open-ended disclosure provision with no discretion given to the facility when a request raises significant security concerns, the regulated community, including the Coalition members, would have commented differently and urged EPA to provide adequate safeguards and limited access for sensitive information. Had EPA reviewed comments from the regulated community on the breadth of this final requirement and the significant information security risks posed by releasing any and all information the LEPC wants, it likely would have included necessary safeguards to protect public safety in the Final Rule.

B. EPA Introduced a New Third-Party Audit Trigger

EPA also introduced a new provision in the Final Rule for triggering its third-party audit requirements. The Proposed Rule included two triggers for EPA’s proposed third-party audit requirement: an accidental release, as defined by the existing regulations, or “an implementing agency requir[ing] a third-party audit based on non-compliance with the requirements of this

¹¹ See ACC, Comments of the American Chemistry Council on EPA Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Proposed Rule, Docket # EPA-HQ-OEM-2015-0725-0537, at 57-59 (May 13, 2016) (“ACC Comments”); AF&PA, Docket ID No. EPA-HQ-OEM-2015-0725, Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act (81 Fed. Reg. 13,638 (March 14, 2016)), Docket # EPA-HQ-OEM-2015-0725-0551, at 25 (May 13, 2016) (“AF&PA Comments”) (summaries of compliance audit reports, STAA, audit reports); AFPM Comments at 72 (names and quantities of regulated substances at facilities); API Comments at 27 (accident history, compliance audit reports, incident investigation reports, and STAA).

¹² Final Rule, 82 Fed. Reg. 4667.

subpart.”¹³ In the Final Rule, EPA retained the first trigger but replaced the second with a new triggering circumstance: “An implementing agency requires a third-party audit due to conditions at the stationary source that *could* lead to an accidental release of a regulated substance.”¹⁴ As examples of such conditions, EPA points to “significant deficiencies with process equipment containing regulated substances, such as unaddressed deterioration, rust, corrosion, inadequate support, and/or other lack of maintenance;” “small ‘pinhole’ releases, that do not meet the criteria in § 68.42(a) for RMP-regulated releases;” and the “occurrence of several prior accidental releases that did not meet the reporting criteria.”¹⁵ EPA seems to contemplate that a fully-compliant facility with a non-reportable event may still meet the criteria of having “conditions . . . that could lead to an accidental release” such that a third-party audit could be required.

Though EPA claims that it only “modifie[d] the criterion,” the Final Rule provision transformed a predictable trigger (non-compliance with specific regulations) into an unpredictable one that relies entirely on the implementing agency’s discretion to determine which conditions “*could* lead to an accidental release.”¹⁶ The Proposed Rule had identified a specific condition EPA thought was problematic, namely noncompliance with regulations. The Final Rule provision is unrelated to legal compliance and subject to the whims and imagination of the implementing agency. Commenters had no opportunity to object to the incredible breadth of a requirement that covers any conditions that *could* lead, no matter how remote the chance of the condition resulting an accidental release.

Accordingly, EPA’s response to comments in the Final Rule does not address this point. In response to commenters’ concerns that “third-party compliance audits will become an overwhelming compliance function,” EPA “disagree[d]” and claimed that it had “limited applicability” of third-party audits.¹⁷ However, EPA only addressed the expected rate of audits resulting from the “accidental release” trigger.¹⁸ It could not respond to comments about how frequently “conditions . . . that could lead to an accidental release of a regulated substance” would trigger third-party audits because commenters had no opportunity to consider the matter. In response to commenters’ concerns about the potential frequency of third-party audits, EPA created an entirely new triggering circumstance. EPA should reconsider its Final Rule to allow for appropriate notice and comment on this new, discretionary triggering provision.

C. EPA Omitted Information on its Cost-Benefit Findings in Violation of *Michigan v. EPA*

While the CAA requires EPA to include cost findings in proposed rules, EPA failed to quantify benefits, link costs and benefits to specific provisions of the Proposed Rule, and include cost findings in the Proposed and Final Rules. These failures violate EPA’s obligations under the

¹³ Proposed Rule, 81 Fed. Reg. at 13,706.

¹⁴ Final Rule, 82 Fed. Reg. at 4699 (emphasis added).

¹⁵ *Id.* at 4616.

¹⁶ *Id.* at 4699.

¹⁷ *Id.* at 4615.

¹⁸ *Id.* at 4615.

CAA and *Michigan v. EPA*, and deprived Coalition members of an opportunity to provide comments that would have impacted EPA's analysis. EPA should grant the petition to reconsider so that it may include the required cost findings and provide the public an opportunity to comment on the analysis.

1. Michigan v. EPA requires EPA to provide an assessment of the reasonableness of its proposed provisions' costs for public comment.

The CAA requires EPA to propose cost findings for most proposed rules, including the RMP rulemaking. Well before EPA issued the RMP Proposed Rule, the Supreme Court made clear in *Michigan v. EPA* that the CAA imposes a duty on the Agency to propose cost findings for public comment unless Congress expressly and unequivocally prohibits consideration of costs.¹⁹ In *Michigan v. EPA*, the Court reviewed an EPA regulation addressing emissions from power plants, referred to as the Mercury and Air Toxics Standards ("MATS") rule. EPA had promulgated the MATS rule pursuant to Section 112(n)(1) of the Act, which requires EPA to determine whether such regulation was "appropriate and necessary" in light of the other requirements imposed on power plants in the statute.²⁰ The Court held that EPA had unreasonably refused to analyze costs when deciding whether it was "appropriate" to regulate hazardous air pollutants from power plants.

The Court considered "appropriate" a "broad and all-encompassing term" that required "consideration of all relevant factors."²¹ The Agency cannot consider "all relevant factors" if it "entirely fail[s] to consider an important aspect of the problem"—namely, cost.²² The Court held that "[n]o regulation is 'appropriate' if it does significantly more harm than good."²³ It explained:

Agencies have long treated cost as a centrally relevant factor when deciding whether to regulate. Consideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions. It also reflects the reality that too much wasteful expenditure devoted to one problem may well mean considerably fewer resources available to deal effectively with other (perhaps more serious) problems.²⁴

Because EPA failed to weigh "the advantages *and* disadvantages of" regulation to ensure that its rule would not "do[] significantly more harm than good," the Court found EPA's assessment that regulation was "appropriate" unreasonable.²⁵

¹⁹ 135 S. Ct. 2699 (2015).

²⁰ 42 U.S.C. § 7412(n)(1).

²¹ *Michigan v. EPA*, 135 S. Ct. at 2707.

²² *Id.*

²³ *Id.*; *see also id.* ("One would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits.").

²⁴ *Id.* at 2707-08 (emphasis in original).

²⁵ *Id.* (emphasis in original).

The Court's rulemaking requirement in *Michigan v. EPA* applies equally to the RMP rulemaking. Section 112(r)(7) obligates EPA to consider costs when promulgating these RMP amendments. Specifically, Section 112(r)(7) requires “reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.”²⁶ This statutory language closely tracks the “necessary and appropriate” framework that compelled EPA to consider costs under Section 112(n)(1) of the Act in *Michigan v. EPA*. Thus, to promulgate a “reasonable” and “appropriate” RMP regulation that is “practicable,” EPA must adequately assess the costs of its Proposed Rule and determine whether they are disproportionate to the benefits the Proposed Rule would confer.

2. *EPA failed to assess costs as required by Michigan v. EPA.*

Without any explanation, the RMP rulemaking wholly ignored the dictate of *Michigan v. EPA* and failed to make cost findings that complied with the decision. While the Proposed Rule summarized annualized costs, in lieu of a true analysis of benefits, EPA quantified the damages from releases and accidents over the past ten years and summarily claimed that “some portion of future damages would be prevented through implementation of a final rule.”²⁷ EPA stated that it was “unable to quantify what specific reductions [in damages] may occur as a result of these revisions.”²⁸ Instead it flatly asserted that it “anticipates that promulgation and implementation of this rule would result in a reduction of the frequency and magnitude of damages from releases.”²⁹ EPA did not even attempt to link the cost of the proposed provisions with the potential benefit, much less analyze the impact on industry and the public. Instead, with no detailed explanation, EPA simply claimed that, by reducing accidents and improving disclosure, the Proposed Rule would “provide benefits to potentially affected members of society.”³⁰ The cost findings contained in the Proposed Rule were a far cry from the detailed analysis required by *Michigan v. EPA*.

EPA's perfunctory analysis of the costs and benefits of the Proposed Rule denied Coalition members the ability to participate in this rulemaking in a meaningful and informed manner. By providing no information quantifying the benefits and the costs of EPA's proposed revisions, Coalition members could not meaningfully provide alternative solutions that would have less of an impact on industry functions and specific cost data for EPA's consideration. Nonetheless, EPA received a number of comments critiquing EPA's low cost estimates in the Proposed Rule.³¹ In response, EPA recalculated and revised some of the costs in the Final Rule.

²⁶ 42 U.S.C. § 7412(r)(7)(B)(i) (emphasis added).

²⁷ Proposed Rule, 81 Fed. Reg. at 13,642, 13,694.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 13,643, 13,694.

³¹ Response to Comments (“RTC”) at 226-27; ACC Comments at 32; API Comments at 13-14; American Forest & Paper Association, American Iron and Steel Institute, ILTA, National Association of Manufacturers, and U.S. Chamber of Commerce, Comment on EPA's Proposed Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air

However, EPA's limited analysis provided no basis to review and comment on EPA's summary conclusion.

Several commenters, including Coalition members, identified this glaring omission and requested that EPA issue a supplemental notice of rulemaking to explain how it intended to comply with *Michigan v. EPA*.³² In response to these comments, EPA offered a general statement of its "belief" as analysis of the relationship of costs and benefits of the Final Rule:

When considering the rule's likely benefits that are due to avoiding some portion of the monetized accident impacts, as well as the additional non-monetized benefits described previously, EPA believes the costs of the rule are reasonable in comparison to its benefits.³³

In the cost and benefits section of the Final Rule, EPA attempted to make it appear that it had performed a quantitative analysis to comply with its obligations under *Michigan v. EPA*.³⁴ EPA's statement, however, simply concluded that the annual projected cost of compliance was half of the annual estimated damages from accidents and releases. This apples-to-oranges comparison reiterates EPA's statement in the Proposed Rule without providing any meaningful assessment of the relationship between costs to benefits of the Final Rule. Apart from these two conclusory statements, EPA attempted no further analysis of the cost findings. This overarching flaw in the RMP rulemaking warrants reconsideration.

D. EPA Made a Stealth Change to the Scope of Compliance Audits

Consistent with longstanding agency guidance and best practices, facilities typically audit a representative sample of covered process units to determine compliance with certain requirements when conducting an RMP or Process Safety Management audit. The Proposed Rule abruptly broke from this precedent. EPA revised the regulatory text in the Proposed Rule from the existing requirement for an owner or operator to evaluate "compliance with the provisions of this subpart at least every three years" to the proposed requirement to evaluate "compliance with the provisions of this subpart *for each covered process*, at least every three years"³⁵

Act, Section 112(r)(7) (EPA-HQ-OEM-2015-0725), Docket # EPA-HQ-OEM-2015-0725-0559, at 12 (May 13, 2016) ("NAM, AF&PA, and Chamber Comments").

³² See, e.g., AFPM Comments at 56-59; NAM, AF&PA, and Chamber Comments at 12.

³³ See Final Rule, 82 Fed. Reg. at 4598; RTC at 219 ("EPA acknowledges that many of these provisions will require time and monetary commitments to implement. EPA also believes that many of these provisions are necessary updates to the existing RMP rule to ensure continued public safety concerning the operation of chemical facilities in and near communities.").

³⁴ "The 10-year RMP baseline suggests that considering only the monetized impacts of RMP accidents would mean that the rule's costs may outweigh the portion of avoided impacts from improved prevention and mitigation that were monetized. The annualized cost of the final rule (approximately \$142 million annually) is approximately 52% of the average annual monetized costs in the 10-year baseline." Final Rule 82 Fed. Reg. at 4597-98.

³⁵ Proposed Rule, 81 Fed. Reg. at 13,704.

However, nothing in the preamble to the proposal alerted the public to this change, much less provided a discussion of the rationale for this revision and the significant impacts that would result from such a change. EPA provided neither notice of nor a justification for this regulatory amendment. Though a few commenters detected EPA's revision and questioned its inclusion,³⁶ most missed this buried revision.

In the Final Rule, EPA responded to those few commenters who noticed the change, providing a lengthy defense for extending the audit requirement to "each covered process," but never analyzing—let alone justifying—the extreme increase in auditing expenses associated with this change. Putting aside the merits of EPA's defense, stakeholders had no opportunity to review EPA's rationale. The Agency, for example, alleged that facilities arbitrarily designate covered process units to evade compliance audit obligations, an unsubstantiated allegation that the Agency had never aired in any RMP rulemaking proceeding.³⁷ With proper notice, everyone would have had a fair opportunity to comment on EPA's proposed revision, produce data on costs facilities would incur from this revision, and identify flaws in EPA's underlying rationale. EPA must therefore reconsider the "each covered process" requirement and initiate a new notice-and-comment period with the benefit of the Agency's factual support, policy rationale, and cost-benefit analysis in order to allow commenters to understand and address EPA's proposed regulatory amendment.³⁸

³⁶ AFPM Comments at 39-42; API Comments at 15.

³⁷ Final Rule, 82 Fed. Reg. at 4615 ("EPA has determined that further self-auditing may be insufficient to prevent accidents and ensure safe operation.").

³⁸ In response to comments that "each covered process" constituted a substantive change, EPA asserts in the Final Rule that this modification was simply a clarification to render the RMP regulations consistent with longstanding EPA interpretation. However, neither EPA's current General Risk Management Guidance nor OSHA's Appendix C to § 1910.119—Compliance Guidelines and Recommendations for Process Safety Management (Nonmandatory), cited by EPA in the Final Rule to support its contention, discuss auditing each covered process. EPA's original Proposed Rule for RMP regulations in 1993 would have required "that over each three-year period, all covered processes are audited." 58 Fed. Reg. 54,190, 54,199 (Oct. 20, 1993). However, the original RMP regulations underwent significant changes between the proposed and final rules, including to the auditing provisions, and EPA did not confirm this position. Moreover, based on EPA's past inspections and enforcement actions, it is clear that EPA has condoned industry's longstanding use of representative sampling in the RMP auditing context. Furthermore, auditing "all covered processes" is not preclusive of auditing a representative sample that represents all of the covered processes, as compared to "each covered process," which necessarily requires each covered process to have its own audit. Finally, even if EPA generally interpreted its regulations to require an audit of each covered process, such a policy or interpretation is a matter of agency discretion that could be changed without rulemaking and disputed in court. In contrast, as part of the regulatory requirements, facilities must now audit each covered process separately or be subject to enforcement action. EPA therefore had a duty to identify this clause as a substantive change and to provide factual support and policy rationale for the change in the proposed and final rules.

E. New Legal Rationales for Third-Party Audits and STAA Merit Reconsideration of the Final Rule

Reconsideration is warranted because EPA failed to explain its statutory authority for the RMP rulemaking, depriving the public of a fair and full opportunity to engage with the Agency on the legal basis for the rulemaking. In the preamble to the proposal, EPA merely quoted the statutory text of Section 112(r)(7)(B)(i) and referred the public to the original RMP rulemaking.³⁹ Nowhere did EPA explain these existing authorities, nor did EPA justify the numerous novel RMP obligations found in the proposal. When Coalition members raised issues concerning EPA's lack of statutory authority, the Agency revealed several new legal rationales in the Final Rule, none of which were provided to the public for comment.

Two examples below illustrate the need for EPA to propose for public comment the legal rationale for the RMP rulemaking.

First, none of the Agency's legal justification of third-party audits was ever made available for public comment. Coalition members pointed out in comments that the Administrative Conference of the United States ("ACUS") wrote a report recommending that agencies explain the legal basis for third-party audits before imposing such audits.⁴⁰ That recommendation was well-known to EPA, as the ACUS report was cited repeatedly in the preamble to the Proposal.⁴¹ When commenters pressed EPA on its authority to enlist private parties to enforce the Act through third-party audits,⁴² the Agency purported to rely on a 1989 Senate Committee report that makes a passing reference to "consultants." That Senate report was not part of any analysis in the Proposal. Nor does it explain how the statutory text of Section 112—as enacted in 1990—provides legal authority for third-party audits for RMP.

Besides the Senate report, EPA argues in the preamble to the Final Rule that "[t]hird-party audits do not constitute enforcement,"⁴³ and therefore third-party audits do not run afoul of the constitutional, statutory, and policy limits on EPA using private parties to enforce the CAA, none of which EPA contests as limitations on its authority. Yet in other parts of the preamble to the Final Rule and in the Response to Comment document, EPA states that third-party audits are an enforcement tool to push companies toward the Agency's view of "compliance."⁴⁴ None of this equivocating analysis appeared in the Proposed Rule.

³⁹ Proposed Rule, 81 Fed. Reg. at 13,646.

⁴⁰ See L. McCallister, Administrative Conference of the U.S., Third-Party Programs Final Report, 5 (Oct. 22, 2012) ("In many cases, Congress provided legislative authority for the third-party program and set forth certain design elements in statute. In other cases, agencies have implemented third-party programs under existing statutory authority."); Proposed Rule, 81 Fed. Reg. at 13,655-56.

⁴¹ Proposed Rule, 81 Fed. Reg. at 13,655-56.

⁴² See, e.g., AFPM Comments at 93-94.

⁴³ Final Rule, 82 Fed. Reg. at 4613.

⁴⁴ RTC at 59 ("EPA believes that conducting the third-party compliance audits is necessary to identify and correct existing non-compliance"); *id* at 83 (The "final rule will require the

Second, EPA's legal defense of STAA rested on a wholly novel invocation of Section 112(r)(7)(A) of the Act, a provision that, until the Final Rule, EPA had never interpreted in any prior rulemaking. Consistent with that regulatory history, EPA relied upon Section 112(r)(7)(B) as the authority for the proposal, citing that provision in the "Statutory Authority," "Compliance Dates," and "Paperwork Reduction Act" sections of the preamble to the proposal.⁴⁵ When Coalition members argued that the text of Section 112(r)(7)(B) provided no authority for STAA, EPA changed tack and invoked Section 112(r)(7)(A), providing a lengthy analysis of that provision in the Final Rule that no one had an opportunity to comment upon. Indeed, the only time EPA has considered its rulemaking authority pursuant to Section 112(r)(7)(A), EPA stated that it was "investigating whether regulations, other than today's proposed rule on risk management programs, are necessary to prevent and detect accidental releases."⁴⁶ EPA has not relied on or promulgated regulations in connection with that statutory authority since that time.

The RMP rulemaking raised novel and important legal questions, including the first ever third-party audit mandate and STAA related requirements in an EPA rule. Those questions deserve public input and comment.

F. EPA Added Numerous Supporting Documents After the Close of the Comment Period and Still Failed to Support Its Position on Core Issues

After the close of the comment period, EPA posted 129 documents to the docket after the close of the comment period, 119 of which were posted on January 13, 2017, the day the Final Rule was published in the Federal Register. This additional support and information—which spans thousands of pages—was not available for review during the comment period. These were more than mere peripheral materials. EPA claimed that the newly disclosed materials included documents that support its position on core issues such as third-party audits, STAA, and LEPC disclosures. During the comment period, Coalition members raised concerns about the lack of data supporting increased safety in jurisdictions with STAA or supporting increased safety from third-party audits.⁴⁷ While EPA contends that the newly disclosed documents address these concerns, they plainly fail to do so.⁴⁸ Rather than justify its contention that the new STAA and third-party audit provisions would enhance safety, EPA merely cites to three white papers on how third-party monitoring impacts compliance. EPA does not use these materials to analyze how third-party audits impact safety at facilities, but merely infers that requiring audits will result in greater safety. While EPA claims that the new documents also address STAA requirements impact on safety, it cites to no additional documents in the record. Rather, EPA consistently presupposes that the new STAA regulations will improve safety. Moreover, the late—and insufficient—addition of these documents prevented commenters from reviewing and analyzing EPA's justification for these provisions. Given these deficiencies, EPA should reconsider the Final Rule.

owner or operator to certify in the findings response report that deficiencies are being corrected.”).

⁴⁵ Final Rule, 82 Fed. Reg. at 4675, 4687.

⁴⁶ 58 Fed. Reg. 54,191-93 (Oct. 20, 1993).

⁴⁷ AFPM Comments at 100-07, 137-140.

⁴⁸ Final Rule, 82 Fed. Reg. at 4622-23.

II. Changed Circumstances Regarding the West, Texas Incident

EPA also should reconsider the entire focus of the RMP Final Rule in light of the revelation that the West, Texas, incident was an intentional criminal act of arson. In addition to the need for EPA to reopen this rulemaking based on the substantive flaws identified in this petition, EPA should open a new notice-and-comment period to allow commenters the opportunity to address this critical fact. Though both accidental release prevention and security are RMP goals that commenters had in mind during the comment period, the fact that the explosion that gave rise to this rulemaking was an act of arson would refocus commenters' thinking and likely would provide EPA with ideas and recommended approaches to try to prevent such an occurrence in the future.

This RMP rulemaking is the result of an Executive Order from President Obama that instructed agencies to consider revising the RMP and other regulations in order to prevent further incidents like the one that occurred in West, Texas, in 2013. When the Executive Order was issued and during the entire period EPA was crafting its Proposed Rule, it was believed that the West, Texas, incident was a terrible accident caused by carelessness and improperly managed hazardous materials. From this understanding, EPA formulated a Proposed Rule that was supposed to address those particular hazards early, identify any noncompliance with regulatory programs that might lead to an accident, more thoroughly investigate accidents that did occur to prevent future ones, explore new technologies that might prevent such accidents, and inform LEPs and the public about past and potential accident scenarios. EPA's proposed regulatory revisions were based on the mistaken understanding that West, Texas, incident was a preventable accident.

On May 11, 2016, the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") announced that it had determined the fire that triggered the explosion at the West, Texas, fertilizer facility had been intentionally set and was the result of a criminal act.⁴⁹ This revelation undercut the assumptions underlying the Proposed Rule for both EPA and commenters. Different measures are required to increase security and prevent criminal acts than those designed to avoid accidental releases. At times, the goals of security and accident prevention and a policy supporting the "public's right to know" are at odds with one another. The outcome of the West, Texas, investigation suggests the weighting of those goals against the broad dissemination of information to the public should come out differently. Different measures are required to address the concerns raised by the incident. However, EPA's Proposed Rule was already written, and the comment period ended two days later on May 13, 2016.

Though some commenters briefly mentioned ATF's determination in their comments, EPA's refusal to extend the comment period or request supplemental comments, made it impracticable to consider the implications for each of EPA's proposed provisions and revise the comments to account for those changed circumstances. Furthermore, though EPA referenced ATF's announcement several times in the Final Rule, it was constrained under the CAA in how much it could adjust the Final Rule based on its Proposed Rule. Fully accounting for these

⁴⁹ ATF Announces \$50,000 Reward in West, Texas Fatality Fire, (May 11, 2016), *available at* <https://www.atf.gov/news/pr/atf-announces-50000-reward-west-texas-fatality-fire>.

changed circumstances requires reconsideration and a new Proposed Rule with notice and comment.

As the primary driver behind the Executive Order that inspired this rule, and the focus of EPA's introduction to the Proposed Rule, the circumstances surrounding the West, Texas, incident highlight the risks central to the Final Rule. Knowing that the incident was intentional would could have impacted the scope of the Executive Order, certainly have changed the comments EPA received, and likely would have caused EPA to construct its proposed and final rules differently had it known of these circumstances at the time of the proposed rulemaking. For example, EPA might have focused its proposal on enhanced security measures for facilities, strict scrutiny of the type of information that should be disclosed to LEPCs or the public, protections for that information, prohibitions against using any sensitive information from these facilities to cause harm to the public or the environment, or screening measures for third parties with access to the facility and its sensitive information. Reliance on the EO as the predicate for this rule, combined with the West, Texas, investigation results further merits reconsideration of the EPA's RMP Final Rule.

REQUEST FOR CAA 307(d) STAY PENDING RECONSIDERATION

While EPA is reconsidering a rule, Section 307(d)(7)(B) of the Clean Air Act permits EPA to stay the effectiveness of that rule "for a period not to exceed three months."⁵⁰ This stay gives the Agency time to reconsider its position and review the rule's requirements without imposing unnecessary compliance costs on regulated entities. EPA may also use a 307(d) stay to avoid any confusion in the regulated industry from the Agency implementing and then quickly revising its regulatory requirements. Staying the effective date of the rule until EPA completes its reconsideration process avoids any such regulatory whiplash.

The Coalition respectfully requests that EPA exercise this authority under the CAA to stay the effectiveness of the RMP Final Rule to the fullest extent permissible by statute pending reconsideration. Facilities with RMP covered processes will begin to incur significant compliance costs such as rule familiarization, training, revising manuals and operating procedures, and conducting compliance audits for "each covered process" soon after the Final Rule takes effect. Staying the rule during reconsideration will avoid imposing these compliance costs prematurely and avoid confusion among facility personnel from learning potentially unnecessary requirements imposed by the Final Rule. A stay would afford EPA the needed time to fully reconsider its Final Rule.

REQUEST FOR AN APA 705 STAY PENDING JUDICIAL REVIEW

In addition to this petition for reconsideration, the Coalition is filing a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging the Final Rule on the grounds that EPA exceeded its statutory authority, failed to follow procedures required by the APA and CAA for agency rulemaking, did not adequately consider costs or assess benefits, and did not adequately respond to all significant comments. While judicial review is pending, Section 705 of

⁵⁰ 42 U.S.C. § 7607(d)(7)(B).

the APA allows EPA to stay the effective date of a final rule if it “finds that justice so requires.”⁵¹ The Coalition requests that EPA make such a finding here.

EPA may stay the effective date of the Final Rule, currently set for March 21, 2017, if it “finds that justice so requires.” Both EPA and the courts have applied the four-part test for preliminary injunctions to determine whether “justice so requires” a stay of agency action pending judicial review. Under that standard, the agency must consider and moving parties must demonstrate: (1) a likelihood of success on the merits of the judicial challenge, (2) irreparable harm to the moving party if the stay is not granted, (3) the potential for harm to others if the stay is granted, and (4) whether the public interest weighs in favor of granting the stay. As explained below, each of these factors weighs in favor of staying this Final Rule until the resolution of judicial review.

A. The Coalition Is Likely to Succeed on the Merits

The Coalition’s petition for review is likely to be granted on its merits. The Final Rule contains several provisions that exceed EPA’s statutory authority to issue regulations under CAA Section 112, including the requirements regarding third-party audits and STAA. EPA failed to identify its statutory authority for requiring third-party audits in the Proposed Rule. In the Final Rule, the Agency only referenced Senate Reports about its general enforcement authority. EPA also did not identify its statutory authority to require STAA until the Final Rule. Finally, to the extent that EPA imposes regulatory requirements for exclusively on-site effects that impact only workers and facility property, it exceeds its statutory directive to address public health and the environment, and encroaches on OSHA’s jurisdiction.

The information disclosure requirements of the Final Rule also run afoul and undermine DHS’s Chemical Facility Anti-Terrorism Standards (“CFATS”).⁵² As described in the comments of various Coalition members, EPA would require disclosure of information to LEPCs and the public that CFATS prohibits from being disclosed in the interest of national security and safety.⁵³ Though AFPM and others raised this objection during the comment period, EPA simply disagreed in its response to comments without conducting an analysis of the statutory requirements or adjusting its regulatory provision to comport with that statute.

Finally, EPA also failed to conduct a proper analysis of the costs and benefits of the Proposed and Final Rules, as required by *Michigan v. EPA*, by refusing to even estimate or qualitatively describe the expected benefits. It did not even attempt to explain how each provision might provide a benefit to EPA’s ultimate goals of accident prevention and mitigation. EPA also did not attribute any specific benefits to any particular provisions in the rule. As a

⁵¹ 42 U.S.C. § 7607(d)(1) states that the “provisions of section 553 through 557 and section 706 of title 5 [the APA] shall not, except as expressly provided in this subsection, apply to actions to which this subsection [307(d)] applies.” See *Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 23-26 (D.D.C. 2012).

⁵² 6 C.F.R. Part 27.

⁵³ See ACC Comments at 26-27; AFPM Comments at 71-75; API Comments at 28; NAM, AF&PA & Chamber Comments at 7-8; UARG Comments at 12-13.

result, EPA could not evaluate the cost effectiveness of its proposed requirements and options because it did not know what, if any, benefits would flow from that provision in order to compare them to the relative costs.

For these reasons and others, the Coalition's petition is likely to succeed on the merits and be granted.

B. The Coalition's Members Will Suffer Irreparable Harm

Coalition member companies will suffer irreparable harm if the effective date of the Final Rule is not stayed.

1. Security Risks

New disclosure obligations in the Final Rule pose significant security concerns for facilities. For example, the Final Rule allows LEPCs to request information from facilities without limitation, including highly sensitive documents required by the Final Rule such as STAA analysis as part of the PHA process and third-party audits. These documents and others may contain detailed security information, the release of which may expose vulnerabilities and weaknesses in refineries, chemical plants, and other facilities. No background checks are required to serve on an LEPC. While LEPCs may act with the best of intentions and in good faith, once sensitive RMP documents are released to LEPCs, federal, state, and local Freedom of Information Act requirements or sunshine laws may allow their broader release to the public, including to terrorists and others groups that may wish to target facilities.

In addition, the public disclosure provisions of the Final Rule require facilities to provide on request the names of regulated substances, safety data sheets, five-year accident history information, first responder point of contact information, and other emergency response program information. During the interagency review process, multiple government officials identified security concerns with EPA's proposed public disclosures, which are still present in the Final Rule. Notably, other government agencies were concerned that the scope of disclosure and lack of standards for dissemination "could assist terrorists in selecting targets and/or increasing the severity of an attack by decreasing first responder capability."⁵⁴ Because of these concerns, the Attorneys General of several states objected to the RMP rulemaking.⁵⁵ The Final Rule failed to address these significant security concerns and the risks will continue if EPA does not stay the Final Rule.

2. Confusion Regarding Compliance Obligations

In the RMP rulemaking, EPA wrote that it "intends" to issue future guidance documents on (1) root cause analysis, (2) STAA, and (3) emergency response exercises, but only after the

⁵⁴ EO 13866 Interagency Review Risk Management Modernization RIN 2050-AG82 NPRM Proposal Rule 20160223 (Redline) 20160223 REV, Docket # EPA-HQ-OEM-2015-0725-0004, at 150 (Mar. 14, 2016).

⁵⁵ Letter from Scott Pruitt, Attorney General, State of Oklahoma et al. to Gina McCarthy, Adm'r, EPA, EPA Docket No. EPA-HQ-OEM-2015-0725-0624 (July 27, 2016).

rule is promulgated.⁵⁶ EPA also advises that OSHA will issue guidance on the root cause analysis.⁵⁷ None of these guidance documents have been released. OSHA, moreover, has yet to complete the PSM rulemaking process and the timeframe for that regulation is unclear. The statute requires EPA to “coordinate any requirements” under its RMP program with OSHA and its PSM program. In the meantime, the RMP regulations as revised by the Final Rule leave important gaps and create compliance uncertainties.

EPA has granted a Section 705 stay under similar circumstances. The Obama Administration repeatedly delayed the effective date of the New Source Review aggregation amendments promulgated by the prior administration. In the 2010 extension of the stay, EPA explained that a stay was warranted to avoid “confusion in the regulated community” and to allow the agency to consider the soundness of the policies underlying the aggregation amendments.⁵⁸ The same concerns are present here, justifying a stay.

3. *Substantial Compliance Costs*

Certain provisions, such as the requirement that compliance audits address “each covered process,” become effective immediately with the Final Rule. That provision alone will require facilities to incur significant unrecoverable costs with no demonstrable corresponding benefit. Facilities with many processes will have to expend significantly more resources and time to prepare for and conduct an audit of each covered process. For example, they will need to hire additional auditors, lengthen the audit, provide additional documents to the auditors, and expand the final report to cover each process unit. Facilities with upcoming audits are already incurring these costs. Other provisions have a longer compliance deadline (e.g., three or four years), but training and preparation must begin now in order to comply with the various requirements when they become effective. Indeed, some members have already started revising their compliance programs to address the Final Rule’s requirements.

In the case of STAA, facilities must be *compliant* when the provision becomes effective in four years, but the regulations require facilities to update their PHAs every five years. Depending on the facility’s PHA schedule, either a facility will have just conducted a PHA in the year before the Final Rule’s effective date, or it will have a PHA scheduled in the four years between the effective date and the STAA compliance date. Any facility that conducted its PHAs in the last year will have to conduct its next PHA early in order to incorporate STAA by the compliance date. Facilities that have their PHAs scheduled in the next four years will have to

⁵⁶ See Proposed Rule, 81 Fed. Reg. at 13,687 (“Lastly, EPA intends to publish guidance for certain provisions, such as STAA, root cause analysis, and emergency response exercises. Once these materials are complete, owners and operators will need time to familiarize themselves with the new materials and incorporate them into their risk management programs.”).

⁵⁷ See Proposed Rule, 81 Fed. Reg. at 13,650 (“OSHA plans to develop a fact sheet on existing resources that explain how to conduct a root cause analysis so the regulated community can better understand the causes of incidents . . .”).

⁵⁸ 75 Fed. Reg. 27,643, 27,644 (May 18, 2010); see also 77 Fed. Reg. 64,908 (Oct. 24, 2012) (EPA granted Section 705 stay to provide additional time to consult with stakeholders on a Federal Implementation Plan, or FIP, under the CAA).

decide whether to include STAA in their next 5-year PHA update (which could occur immediately after the Final Rule takes effect, depending on the date of their last PHA update) or to conduct two PHAs in the next four years with the second one incorporating STAA—a significant expenditure of time and resources.

In the meantime, it is unclear exactly how EPA expects a facility to conduct an STAA. EPA acknowledged as much in both the Proposed and Final Rule by saying it “intends to publish guidance for certain provisions, such as STAA.”⁵⁹ However, no timeframe was provided for this guidance and it is likely to arrive too late for facilities with PHAs scheduled soon after the effective date of the Final Rule. EPA itself recognized that “[o]nce these [guidance] materials are complete, owners and operators will need time to familiarize themselves with the new materials and incorporate them into their risk management programs.”⁶⁰ In addition to this compliance uncertainty, the staff resource commitment and cost of conducting the STAA, particularly for existing processes, will be extremely high. Moreover, based on their engineering expertise, Coalition member companies expect that the likelihood of STAA identifying any practicable changes to existing processes is low.

The Final Rule should be stayed to avoid the irreparable harm of forcing Coalition member companies and other regulated facilities to comply with a legal standard that the agency is still working to complete.

C. Other Interested Parties Would Not Suffer Harm By Temporarily Staying the Rule

While Coalition member companies and other regulated entities will suffer irreparable harm if they must begin implementing the Final Rule’s requirements while judicial review is pending, granting a stay would not cause substantial harm to any other parties. Many of the Final Rule requirements apply in reaction to specific events, such as accidental releases or incidents. Thus while the facility must prepare itself to address those criteria if the relevant circumstances arise, any alleged benefits from the new provisions would not accrue to the general public or environment until such an event occurred.

In addition, it is not clear—including apparently to EPA—how much or even whether the provisions of the Final Rule will in fact generate benefits. In both the Proposed Rule and the Final Rule, EPA explicitly stated that it could not quantify or even describe the benefits it expected to accrue from the proposed or final provisions. It instead resorted to quantifying and describing past harms to property and people from hazardous chemical incidents, including both on- and off-site impacts, and then asserting that it believed some undetermined amount of these damages could be prevented by implementing its proposed regulatory program as a whole. EPA thus has not, and presumably cannot, demonstrate that the provisions included in the Final Rule will generate benefits for the public or environment—as a whole or individually. Moreover, EPA’s data shows that the RMP requirements in place over the past many years—before the Final Rule—have resulted in a significant decrease in accidental releases. As a result, staying

⁵⁹ Proposed Rule, 81 Fed. Reg. at 13,687; Final Rule, 82 Fed. Reg. at 4676.

⁶⁰ Proposed Rule, 81 Fed. Reg. at 13,687; Final Rule, 82 Fed. Reg. at 4676.

the implementation of those provisions temporarily while judicial review is pending cannot be shown to cause any harm to others.

D. A Stay Is in the Public Interest

Staying the effective date of the Final Rule is in the public interest. Allowing the Final Rule to remain in effect pending judicial review raises significant security concerns and imposes substantial costs on regulated entities that they will not recoup, while providing no demonstrable benefit to the general public or the environment. EPA has not demonstrated that any of its finalized provisions would improve safety or prevent accidents that harm American workers, citizens, or property. A stay is in the public interest to ensure that EPA does not jeopardize facility security. Similarly, the public interest would be furthered by ensuring that funds spent complying with regulatory demands in fact yield measurable benefits.

REQUEST FOR RESCISSION UNDER SECTION 553(e) OF THE APA

As this Petition demonstrates, the Final Rule rests on a faulty foundation. The pre-existing RMP-PSM regulatory framework has proven to be a robust and effective process for improving safety and reducing accidental releases, as EPA's own data confirms.⁶¹ Accordingly, the Coalition requests rescission of the 2016 Final Rule, leaving in place the effective pre-existing rule.⁶² The Coalition commits to work with EPA, OSHA and other stakeholders on a new rulemaking in response to this Petition.

⁶¹ See EPA, *Regulatory Impact Analysis*, Docket # EPA-HQ-OEM-2015-0725-0037, at 16 (Dec. 16, 2016) (“[A]ccident histories submitted with RMPs have shown a reduction in the frequency of accidents since the beginning of the program”); EPA, *Regulatory Impact Analysis*, Docket # EPA-HQ-OEM-2015-0725-0734, at 16 (Dec. 16, 2016) (same); AFPM Comments at 64.

⁶² Section 553(e) of the APA provides ample authority to rescind the Final Rule. See 5 U.S.C. § 553(e) (“Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.”); *Nat’l Ass’n of Homebuilders v. EPA*, 682 F.3d 1032, 1037 (D.C. Cir. 2012) (denying petition for review of EPA’s repeal of a recently amended rule because “[a]n agency’s view of what is in the public interest may change, either with or without a change in circumstances.”) (citation and internal quotation marks omitted). Rescission is also consistent with Section 307(d) of the CAA, which only limits reconsideration to the scope of objections raised upon reconsideration. Where, as here, several overarching and interrelated objections are made to a rule, EPA may properly entertain rescission of the entire rule as part of the reconsideration proceeding. See 42 U.S.C. § 7607(d)(7)(B) (When granting a petition for reconsideration, “the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed”).

CONCLUSION

For the above reasons, the Coalition requests that EPA reconsider and rescind its RMP Final Rule and stay the effective date of the Final Rule for the duration of the administrative proceedings and judicial review.

February 28, 2017

Respectfully submitted,

Leslie A. Hulse - E.W.

Leslie A. Hulse
Assistant General Counsel
American Chemical Council

Jan Poling

Jan A. Poling
Vice President, General Counsel, and
Corporate Secretary
Andrew J. Topps
Assistant General Counsel
American Forest & Paper Association

Richard Moskowitz

Taylor Hoverman

Richard Moskowitz
General Counsel
Taylor Hoverman
Associate Counsel
*American Fuel & Petrochemical
Manufacturers*

Peter Tolsdorf - EW.

Peter Tolsdorf
Senior Counsel
American Petroleum Institute

*Chamber of Commerce of the United States
of America*

Quentin Riegel - EW.

Linda E. Kelly
Senior Vice President & General Counsel
Quentin Riegel
Vice President, Litigation and Deputy
General Counsel
Leland P. Frost
Associate General Counsel
National Association of Manufacturers

William L. Wehrum - EW.

William L. Wehrum
Counsel for the
Utility Air Regulatory Group

To: Schnare, David[schnare.david@epa.gov]
From: Breen, Barry
Sent: Mon 3/6/2017 5:11:53 PM
Subject: to make sure my voice mail reached you

I wanted to make sure my voice mail message actually made it to your landline phone. It was from Friday afternoon, about whether Kevin Bromberg of SBA had talked to you and you'd referred him here.

If the voice mail didn't actually get to your phone, you can let me know and I can call again.

Barry

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Dravis, Samantha
Sent: Fri 3/10/2017 10:53:44 PM

Personal Matters/Ex. 6

To: McCown, Brigham (OST)[brigham.mccown@dot.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Konkus, John[konkus.john@epa.gov]; Schnare, David[schnare.david@epa.gov]; McInerney, Marianne (OST)[marianne.mcinerney@dot.gov]; Moore, Allison (OST)[A.Moore@dot.gov]; Fulton, Finch (OST)[Finch.Fulton@dot.gov]; Pugliese, Anthony (OST)[anthony.Pugliese@dot.gov]
From: Smith, Loren (OST)
Sent: Tue 3/14/2017 1:44:26 PM
Subject: RE: CAFE notice

It looks as if the Federal Register will post the CAFÉ joint notice to the website **tomorrow at 8:45am**. If we need to put that off a couple hours, we would need to request that today. Please let me know if we think 8:45 would be a problem.

From: McCown, Brigham (OST)
Sent: Monday, March 13, 2017 9:02 PM
To: Smith, Loren (OST)
Cc: Grantham, Nancy; Konkus, John; Schnare, David; McInerney, Marianne (OST); Moore, Allison (OST); Fulton, Finch (OST); Pugliese, Anthony (OST)
Subject: RE: CAFE notice

All: as a follow-up to Loren's note, DOT will keep a lookout and will advise the group as soon as it is out.

Loren, I'd recommend asking OGC's FR liaison to confirm Tuesday AM by reaching out through James to see if we can get some confidence factor so everyone can plan on the path forward. Let me know if you agree.

-Brigham

B. A. McCown

Consultant - Advisor to the Secretary

U.S. Department of Transportation

Office of the Secretary

West Building W92-319

1200 New Jersey Ave, S.E.

Washington, DC 20590

(202) 366-9315 (office)

Personal Phone/Ex. 6 (mobile preferred)

From: Smith, Loren (OST)
Sent: Monday, March 13, 2017 6:50 PM
To: Grantham, Nancy; Konkus, John; Schnare, David; McInerney, Marianne (OST); Moore, Allison (OST); Fulton, Finch (OST); Pugliese, Anthony (OST); McCown, Brigham (OST)
Subject: RE: CAFE notice

Hi Nancy – the notice will be on the Federal Register’s website on Wednesday and then likely published in physical form on Thursday. Not sure yet on time of day, but I did ask, hoping to hear back soon.

I’m told that the snow shouldn’t be a problem here, as the FR uses teleworkers on their internal circulation processing, but this is not guaranteed, either.

From: Grantham, Nancy [<mailto:Grantham.Nancy@epa.gov>]
Sent: Monday, March 13, 2017 5:19 PM
To: Smith, Loren (OST); Konkus, John
Cc: Grantham, Nancy
Subject: FW: CAFE notice

Hi Loren,

For our briefing for the White House re: Wednesday’s event – we need to know when this will be published in the FR?

Thanks

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

Personal Phone/Ex. 6

From: Schnare, David
Sent: Monday, March 13, 2017 1:05 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Fwd: CAFE notice

Please handle and let me know.

d

Sent from my iPhone

Begin forwarded message:

From: "Smith, Loren (OST)" <Loren.Smith@dot.gov>
Date: March 13, 2017 at 12:59:48 PM EDT
To: David Schnare <schnare.david@epa.gov>
Subject: CAFE notice

Please email me the final Word doc version as well - it is part of the Federal Register submission process.

Sent from my iPhone

To: Benton, Donald[benton.donald@epa.gov]; Greaves, Holly[greaves.holly@epa.gov]; Schnare, David[schnare.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
Cc: Vaden, Stephen - OGC[Stephen.Vaden@ogc.usda.gov]
From: Laird, Russell - OSEC, Washington, DC
Sent: Fri 3/10/2017 10:34:44 PM
Subject: Perspective regarding carbon and climate
global warming summary.doc

EPA Colleagues,

In regard to the comments by Administrator Pruitt recently I thought you might benefit from seeing the attached paper regarding scientific issues involved with carbon and climate fallacies. My work at USDA is not directly related to this but the retired scientist who wrote these thoughts happens to be my father.

Thank you for your work on this.

Sincerely,

Russell Laird

United States Department of Agriculture

1400 Independence Ave., S.W., Washington, D.C. 20250

www.usda.gov

Office: 202-720-0350

Mobile: Personal Phone/Ex. 6

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties.

If you believe you have received this message in error, please notify the sender and delete the email immediately.

Weldon Laird

Some facts and fallacies

This is being written for my children and grandchildren to warn them to beware of idiotic notions being pushed by global warming activists around the world.

Some Facts and Fallacies about the world

Greenhouse gas

You will hear sensational claims that human caused carbon dioxide emissions are going to produce global warming that will be a world disaster. The scaremongers have managed to cause worldwide panic as reflected in international conferences aimed at curbing use of fossil fuel. This has resulted in carbon credits and trading schemes and a lot of other nonsense. But in fact it is impossible that CO₂ from mankind's activities can disrupt the global climate. There are many reasons. Do not let the self-described eminent scientists confuse you. I will list some of these facts briefly here, there is much more hard fact supporting every bit of this.

First note that the normal atmosphere is composed of about 78.08 % Nitrogen gas and 20.95 % Oxygen gas. That leaves 0.97 % for all the other trace gases, and 0.93 % of that is reported as Argon. Along with the dry gas part there is considerable water vapor or humidity in the atmosphere in most places. There is 0.038 % carbon dioxide which is a vanishingly small fraction, usually reported as 350 to 380 parts per million. The great scientists claim that it is going to double within 50 years because we burn some coal and natural gas. However, 700 to 760 parts per million is still not enough to have any effect whatsoever.

What is worse, they claim that CO₂ retains catastrophic amounts of heat. They even coined the scare term "greenhouse gas" (which the US EPA uses!) to describe this supposed monster heat reservoir. The big problem is that heat capacity or specific heat (slightly different terms for how much heat substances can retain in comparison to water which = 1) for Nitrogen is 0.247 BTU/lb deg F. for Oxygen is 0.217 and for CO₂ is 0.205. (Marks standard handbook for Mechanical Engineers, Seventh Edition, McGraw Hill, 1958. Table 24 pp 4-22). This is well established fact, in all the relevant handbooks. So then if the CO₂ fraction increases the atmosphere will hold less heat; that means increased CO₂ has a cooling effect!

An interesting thing about CO₂, it actually is 27.3% carbon and 72.7 % oxygen by mass. So it is composed of about three quarters of the second most abundant gas in the atmosphere.

The IPCC and US EPA have come up with what they define as “*global warming potential*” for other gases like Methane referred back to CO₂ and calculate a huge potential for these gases. That is just incredible and pure nonsense. The specific heat shows the true heat capacity of these gases. Methane = 0.593; which is about 2.4 times that of dry nitrogen and just over half for water vapor. The only slight problem is that there is never any measurable amount of Methane in the open atmosphere. A cow passes gas and it is gone in the wind before you have any chance of measuring it. (*The EPA did at one point push the ridiculous notion that we needed to diaper all the cows in the feedlots on the plains to contain the supposed emissions.*) The oil industry spares no effort to keep the methane they produce contained. It is one of their major products. The coal industry has a safety problem because of the methane in the coal beds they mine but it is small enough that they can ventilate enough to maintain safety in their operations. A while ago the NOAA or similar agency published claims in the news that they had found a huge pool of methane sitting in the four corners region of the US using satellite sensors or something like that. The main thing that tells us is those idiots have never been even close to the four corners region. With the prevailing wind that normally exists near the ground and aloft in that region a pool of methane there today will be in Chicago tomorrow.

One thing that is evident is that even though they coined the scare term “greenhouse gases” they apparently have no knowledge of how a greenhouse works. It is due to trapped air. Solar heat radiation coming in through the transparent building structure heats solid surfaces inside which heats the air by direct conduction. Normally in outdoor situations the heated air is dissipated by wind currents or thermal circulation, but trapped within a closed greenhouse structure this is not possible. They have to ventilate to control temperature. The great scientists are pushing the ignorant notion that the vanishingly small amount of CO₂ is making a giant world greenhouse structure.

We mentioned that there is 350 to 380 parts per million of CO₂ in the atmosphere, there is a strong reason for that which assures that it is always going to be in that range. CO₂ is one of the major limiting factors of plant growth. Green plants and also factors in desert or ocean environments are constantly using CO₂ to generate biomass through photosynthesis and similar mechanisms. The plants would use all of the CO₂ available but they cannot pull it out of the atmosphere below 350 PPM. Actually it is a very marvelous thing that God designed for plants to do in drawing CO₂ for a high level of photosynthesis out of the tiny amount that is in the atmosphere. They absorb it through mostly the stomata in the bottom of the leaves while at the same time returning the oxygen part into the atmosphere along with water vapor.

The plants break down the CO₂ through photosynthesis using sunlight and combine it with water and nutrients pulled up from the roots to produce carbon compounds such as starch, sugar, and lignin which are sequestered in the plant structure. There are several classes of plants that can grow at different levels of CO₂. Some can only grow with about 400 PPM or better so are dominated by the ones with the stronger absorption method. Gaseous mixtures normally fill the entire volume at constant level due to diffusion and mechanical mixing but if we could see the CO₂ we would see the constant flow into the

sink created by plant leaves. A lot of the knowledge about CO₂ need and usage by plants has come out of the USDA ARS lab near Temple, Texas.

Cropland, grassland, and forest land absorbs about 2 to 20 tons per acre per year of carbon and sequesters it in the biomass. Desert patina does somewhat the same thing at night; still a lot of mystery how that occurs. Algae and other growths in the oceans and waters also do a similar absorption of CO₂. The doomsday bunch go downstream of major CO₂ sources like power plants and measure the plume of enriched CO₂ but do not realize that the plants automatically take care of that and just increase growth within the enriched zone.

Sugar is 42.1 % carbon, 6.5 % hydrogen and 51.4 % oxygen. Starch and lignin are similar. There is some nitrogen in the proteins and many traces of other elements in plant material.

CO₂ is absolutely not a cause for climate change.

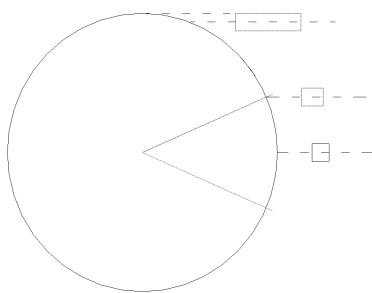
I am not arguing that there is not climate change, actually that is all it ever does. Global warming normally starts every day about daybreak and usually increases until about 5:00 pm then global cooling starts about nightfall and goes until just after daybreak. All the heat energy we get comes from the sun. Starlight is too small to measure and moonlight is just reflected sun energy. The sun is a very violent combustion that fluctuates considerably on the short and long time scales. That is the main driving force for climate on earth. This happens on a daily and seasonal basis randomly within a range.

The sun is a big fire that fluctuates considerably and we are directly connected. If it warms one degree we follow that. The sun puts out energy in several forms that have strong effects for us. You read things in the literature about the sun is hundreds of thousands to millions of degrees. Actually about 14,000 degrees F is white hot and ordinary matter cannot get thermally heated above that. Higher energy levels break matter down into plasma and it is not the same thing any more. Electromagnetic energy like microwave comes from that and has strong heating effects on water and things containing water. However most of the sun energy we receive is in the red and infrared range which is thermal heat energy and very strongly heats most matter. The sun heats up or cools off in random pattern both on the short term and long term, just like a big old camp fire. We follow that on earth and do not have any effect on what happens with the sun.

There are some very interesting things about our relationship with the sun. If you ask anyone why it is colder at the poles than it is at the equator you will probably get the answer that it is farther from the sun. Absolutely wrong! The poles are only 0.004 % farther away from the sun. Because of the distance in comparison to sun's diameter all of the solar energy we see is coming virtually straight in, not coming from a wide angle. Since the earth axis of rotation is tilted about 23.4 degrees with the plane of rotation around the sun we get the seasons. That is not constant, there is some wobble to the earth as well. The reported level of energy from the sun is about 1100 watts per square meter

above the atmosphere however this is only true for that one square meter which is instantaneously directly under the sun. This happens for any place only once per day since the earth is always spinning and moving around the sun. That spot also moves every day because of the earth's tilt. Attenuation by moisture vapor, dust and the atmosphere brings the incoming heat level down to about 800 to 900 watts per square meter at the earth surface in clear weather, it can be much less if there is much cloud.

Since the earth is curved and the sun so far away that heat energy comes straight in, the amount of solar energy per unit area is always less away from that single square meter directly under the sun at a given instant because the exposed surface area increases in every direction around the sphere. At the poles it is grazing incidence, meaning that the energy impacts a huge area. When it is midsummer in one hemisphere the surface area impacted by the square meter of solar energy at the other tropic is better than double. In other words the land there is receiving only half as much energy per square meter. That is why it is winter there. Also there is a lot longer path through the atmosphere that attenuates the energy even further. The drawing (Fig. 1) shows the relative area impacted by the solar energy on a midsummer day at the equator, at the tropics and near the poles. The boxes illustrate the relative area compared to the single square area directly perpendicular to the incoming sun energy. Since the solar radiation is impacting a rotating wobbling sphere the area is constantly changing. Also since it is a sphere the square area depiction is not exact.



An interesting observation, a person standing at the pole would be receiving the same energy exposure as one lying flat at the equator, except for the long path through the atmosphere. Also the man standing at the pole would be slowly turning one revolution per day while the man at the equator is racing eastward at over one thousand miles per hour. As the earth turns the area impacted by the fixed unit of the sun's radiation also varies from infinitely large to one and then back to infinity during the day.

Figure 1. Illustration of the area that a single square unit of solar energy impacts on the curved surface of the earth sphere.

It is likely that man's activity does impact the local climate. One big thing is structures and roads.

These things absorb solar energy as pure heat while plants absorb it and use it for photosynthesis rather than thermal heat. Also plants do get rid of excess thermal heat by evaporation of water up to the severe wilting point. The difference between a lawn, crop or forest and paving or roofs is very large in terms of sensible heat forced into the immediate atmosphere. Compare this to a large coal fired power plant where waste heat is dumped into water vapor through the cooling tower and the CO₂ plume enhances plant growth, both of which result in net cooling effect on the environment.

Several years ago the USDA ARS and Forest Service who both maintain many weather measuring stations realized that some of the locations were giving measurements of

increasing temperature that did not seem reasonable. The conclusion was that these locations were being affected by construction of buildings and pavement nearby. This resulted in a false indication of a warming environment. The data for these locations was flagged as in error from the time of construction of the encroaching structures.

Pavement and roofs all absorb heat much more strongly than plants and then cause more contact heating of the air which creates a local heat island. Green plant growth uses a considerable part of solar radiation in photosynthesis but also evaporates water to maintain lower temperature of itself. Plants can maintain canopy temperatures in summer within the 70 through 80 degree F range up to the severe wilt point. In the same solar radiation environment pavement and structure and machinery surfaces will absorb heat up to 135 to 150 degrees F. This results in much higher air temperatures through direct contact even with the same level of solar energy.

This can have a considerable effect on the local climate. For instance, several years ago the state highway department upgraded the road in front of our house by widening the pavement about 30%. This resulted in replacing a ribbon of grass that had a normal daytime peak temperature around 80 degrees with a pavement reaching above 130 degrees. This increased air heating along that strip in front of our house by 1/3. We are about two miles north of the Lubbock, Texas airport where the National Weather Service maintains the official weather station for this area. Over the last several years the airport has had a number of large metal buildings built on the property as well as widening the runways and taxiways by about 25%. The weather records show this as increased temperature which could be mistaken for global warming. Metal and paving surfaces get very hot but that is nothing new, back in the 1940's we had many instances of being able to fry an egg on the pavement. However, there may only have been about 20% as much pavement and buildings and automobiles and such things around then so the measurements of climate were much cooler.

Having read the now discredited IPCC report on global warming a few years ago I have a few observations. They are really good at computer enhanced illustrations with many pretty pictures. They have factual errors on almost every page and now maybe it turns out to be deliberate fabrications. I thought about writing up a critique on all the factual errors but let it ride for now. It is very clear that they cherry picked the locations and times where the changes around weather stations showed increasing temperatures and jumped to the notion that it was global warming. They then invented the CO2 fallacy to drive their scenario.

The papers by Susan Solomon et. al. and the EPA are all fantasy based on the fallacy I pointed out above. They do not mention the encroachment and structure development that probably is the cause for the increase in local temperature measurement trend noted for some long term weather station locations. It is incredible to me how such garbage can be published. In Solomon's paper abstract they make the sensational claim there will be irreversible changes creating another "dust bowl." However, we have had the dust bowl and several droughts in history and they all reversed. They claim in the section on sea level rise that carbon dioxide will cause "*irrevocable*" sea level rise. This is idiotic;

revocable is a legal term having nothing to do with reversibility of physical events. I have to conclude that Solomon and her reviewers and editors are illiterate or very nearly so.

Solomon presents several graphs with modeling results purporting to show that the heat from CO₂ is going to hang around a thousand years and swell up the ocean and inundate the coastal regions and totally dry out all the interior regions. She does this with model results that she programmed. It has no connection with reality. You can write the model to show whatever result you want to claim; and that is just what she did. She refers to the data from the IPCC but that has been proven by their own e-mail chain to be falsified.

The ocean is the major buffer for the earth's climate. More than 70% of the earth surface is deep water which has very large buffering capacity. The ocean is not going to store heat and swell up and inundate anything, it will just evaporate or condense a little water to handle the varying heat available. It takes 900 to 1000 BTU per pound to make the change from liquid to vapor or vice versa for water. The ocean surface layer maintains 100% humidity in the atmosphere near the surface which is a function of temperature and pressure (ie. vapor pressure). The pressure is the controlling factor. Average atmospheric pressure is entirely a function of the amount of atmosphere on earth which will not change without impact of a large comet or some such catastrophe.

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]; Reeder, John[Reeder.John@epa.gov]; Dickerson, Aaron[dickerson.aaron@epa.gov]
From: Willis, Sharnett
Sent: Tue 3/14/2017 11:22:46 AM
Subject: Will not be in today - streets and sidewalks are very icy.

Sent from my iPhone

To: Flynn, Mike[Flynn.Mike@epa.gov]; Coleman, Sam[Coleman.Sam@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]
Cc: Dunham, Sarah[Dunham.Sarah@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Payne, James[payne.james@epa.gov]; Packard, Elise[Packard.Elise@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Gray, David
Sent: Wed 3/1/2017 6:47:41 PM
Subject: RE: TX, OK, and AR
AR Regional Haze Stay 1 MAR 2017.pdf

All –

Here is a signed copy of the letter.

David

From: Flynn, Mike
Sent: Wednesday, March 01, 2017 10:52 AM
To: Coleman, Sam <Coleman.Sam@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>
Cc: Dunham, Sarah <Dunham.Sarah@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Payne, James <payne.james@epa.gov>; Gray, David <gray.david@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: RE: TX, OK, and AR

Sam,

David Schnare ran this issue by the Administrator and Ryan this morning, and you are good to go from here. Will leave it to you, Sarah and OGC to work out signature and time for DOJ. Thanks for checking in.

Mike

Mike Flynn

Acting Deputy Administrator

U.S. Environmental Protection Agency

202-564-4711

From: Coleman, Sam

Sent: Wednesday, March 01, 2017 10:15 AM

To: Connors, Sandra <Connors.Sandra@epa.gov>

Cc: Dunham, Sarah <Dunham.Sarah@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>;
Richardson, RobinH <Richardson.RobinH@epa.gov>; Payne, James <payne.james@epa.gov>;
Gray, David <gray.david@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Minoli, Kevin
<Minoli.Kevin@epa.gov>

Subject: Re: TX, OK, and AR

We will settle on signature soon - Either me or Sarah. Need to give DOJ a some time to contact the litigants. Here is a draft letter:

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Sincerely,

Samuel Coleman, P. E.,

Deputy Regional Administrator

214.665.2100 Ofc

214.665. 3110 Desk

Personal Phone/Ex. 6 Cell

Coleman.sam@epa.gov

Sent from my iPhone

On Feb 28, 2017, at 2:51 PM, Connors, Sandra <Connors.Sandra@epa.gov> wrote:

Sam/Sarah – We just finished our 3:00 with Mike and David Schnare. Just checking on 1) who is authorized to sign this letter and 2) assuming one or both of you, is e-mail concurrence sufficient? Also, if there is a draft of the letter ready, can you please share?

Thank you,

Sandra

Sandra L. Connors
Senior Advisor

Office of the Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, Room 3317
Washington, DC 20460
(202)564-4231

connors.sandra@epa.gov

From: Flynn, Mike
Sent: Tuesday, February 28, 2017 1:23 PM
To: Connors, Sandra <Connors.Sandra@epa.gov>
Subject: FW: TX, OK, and AR

Possible topic for 3pm

Mike Flynn

Acting Deputy Administrator

U.S. Environmental Protection Agency

202-564-4711

From: Coleman, Sam
Sent: Tuesday, February 28, 2017 9:14 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Richardson, RobinH <Richardson.RobinH@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Schnare, David <schnare.david@epa.gov>; Coleman, Sam <Coleman.Sam@epa.gov>
Subject: Re: TX, OK, and AR

Ryan,

As requested, the purpose of this email is to get your concurrence on sending a letter to Arkansas and Entergy this Wednesday concerning

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Background:

EPA issued a FIP for Arkansas in September 2016. Among other things, the FIP set emission limits based on the best available retrofit technology (BART) at 2 power plants (White Bluff, Flint Creek) and established reasonable progress requirements at another power plant (Independence).

Arkansas, Entergy, and others filed suit in the 8th Circuit. In February, Arkansas and Entergy filed motions with the court asking it to stay the FIP. EPA's response to those motions is due March 8th.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Samuel Coleman, P. E.,

Deputy Regional Administrator

214.665.2100 Ofc

214.665. 3110 Desk

Personal Phone/Ex. 6 Cell

Coleman.sam@epa.gov

Sent from my iPhone

On Feb 27, 2017, at 9:39 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Sam, I've been meaning to following up with you concerning the BART FIP, Oklahoma Water quality approval, and regional haze litigation in AR.

I see we took action on the Oklahoma water quality approval plan, but can I get a short briefer on the TX BART FIP comment extension and the history on that with a background piece on the AR regional haze issue?

I'm providing this information to update the Administrator.

Thanks

Ryan.

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

Ex. 6



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

March 1, 2017

Mr. Nicholas Jacob Bronni
Ms. Jamie Leigh Ewing
Arkansas Attorney General's Office
200 Catlett-Prien Building
323 Center Street
Little Rock, AR 72201
Counsel for the State of Arkansas

William M. Bumpers
Debra J. Jezouit
Allison Watkins Mallick
Baker Botts L.L.P.
1299 Pennsylvania Ave., NW
Washington, DC 20004
Counsel for Entergy

Jennifer L. Loiacano Arkansas Electric Cooperative Corporation
P.O. Box 194208
Little Rock, AR 72219-4208

Chad L. Wood
PPGMR Law, PLLC
101 Morgan Keegan Dr., Suite A
Little Rock, AR 72202
Counsel for Energy Environmental Alliance of Arkansas

Re: Petitions for Agency Reconsideration and Stay
Arkansas Regional Haze

Dear Mr. Bronni, Ms. Ewing, Mr. Bumpers, Ms. Jezouit, Ms. Mallick, Ms. Loiacano, and Mr. Wood:

This letter concerns petitions from the State of Arkansas, dated November 22, 2016, from Entergy, dated November 23, 2016, from Arkansas Electric Cooperative Corporation (AECC), dated November 23, 2016, and from Energy Environmental Alliance of Arkansas (EEAA), dated November 28, 2016, to the U.S. Environmental Protection Agency (EPA) requesting reconsideration and an administrative stay of provisions of EPA's final rule entitled "Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan," 81 FR 66332 (September 7, 2016), pursuant to section 307(d)(7)(B) of the Clean Air Act (CAA) and section 705 of the Administrative Procedure Act.

EPA intends to issue a Federal Register notice initiating a reconsideration process as to only the following issues: 1) timing of compliance with NOx emission limits at Flint Creek, White Bluff, and Independence; 2) the appropriate low load NOx emission limits for White Bluff and Independence; 3) the appropriate SO2 emission limits for White Bluff and Entergy's future plans for White Bluff; and 4) timing of compliance with SO2 emission limits at Independence. Note that as to the NOx compliance dates and low-load NOx limits, EPA did not specifically request comment on the 18-month compliance dates for NOx controls or the specific low-load NOx limit in the FIP. Reconsideration will allow for additional public comment on these issues. Also, since EPA intends to reconsider the compliance deadlines for the NOx emission limits for Independence, it would be prudent to reconsider the compliance dates for the SO2 limits for Independence at the same time.

This letter does not address other requests for reconsideration raised in the petitions. Nor does it address the merits of, or suggest a concession of error on, any issue raised in the petitions.

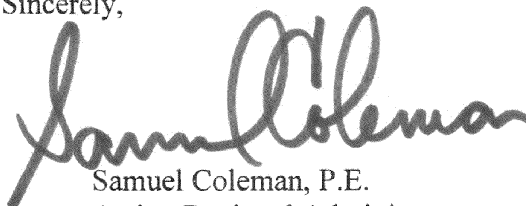
As part of the reconsideration process, EPA expects to provide an opportunity for notice and comment. EPA intends to stay for 90 days the particular rule provisions that it is reconsidering as listed above. This stay will be effective upon publication in the Federal Register. It will apply only to any requirements incurred during the 90-day stay period. This stay will not affect the ultimate compliance deadlines for rule provisions that EPA is reconsidering. As part of the reconsideration process, EPA intends to toll these deadlines or take other appropriate action.

If you have questions regarding the reconsideration process, please contact us or your counsel may contact Barbara Nann at (214) 665-2157. If you have any questions or wish to discuss the litigation, please have your counsel direct inquiries to Samara Spence, Department of Justice, at (202) 514-2285.



Sarah Dunham
Acting Assistant Administrator
Office of Air & Radiation

Sincerely,



Samuel Coleman, P.E.
Acting Regional Administrator
Region 6

To: Grantham, Nancy[Grantham.Nancy@epa.gov]; Konkus, John[konkus.john@epa.gov]
Cc: Hull, George[Hull.George@epa.gov]; Moore, Allison (OST)[A.Moore@dot.gov]; Milbourn, Cathy[Milbourn.Cathy@epa.gov]; Amy Dewey[amyhdewey@gmail.com]; Smith, Loren (OST)[Loren.Smith@dot.gov]; Schnare, David[schnare.david@epa.gov]
From: McInerney, Marianne (OST)
Sent: Fri 3/10/2017 10:22:51 PM
Subject: RE: CAFE discussion draft: joint DOT-EPA notice

I relayed this to Dave last evening when there was some concern on process.

Marianne McInerney

Office of the Secretary

U.S. Department of Transportation

Mobile: Personal Phone/Ex. 6

From: Grantham, Nancy [mailto:Grantham.Nancy@epa.gov]
Sent: Friday, March 10, 2017 5:21 PM
To: McInerney, Marianne (OST); Konkus, John; Grantham, Nancy
Cc: Hull, George; Moore, Allison (OST); Milbourn, Cathy; Amy Dewey
Subject: RE: CAFE discussion draft: joint DOT-EPA notice

Hi all,

We understand that the FR for the upcoming announcement is in the Secretary's office for signature and that DOT has agreed to file it with the FR office once the White House lets us know it is ready to go.

Thanks

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: McInerney, Marianne (OST) [<mailto:marianne.mcinerney@dot.gov>]
Sent: Friday, March 03, 2017 9:43 AM
To: Konkus, John <konkus.john@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Moore, Allison (OST) <A.Moore@dot.gov>;
Grantham, Nancy <Grantham.Nancy@epa.gov>; Milbourn, Cathy <Milbourn.Cathy@epa.gov>;
Amy Dewey <amyhdewey@gmail.com>
Subject: Re: CAFE discussion draft: joint DOT-EPA notice

Have you drafted a Q&A for use with rollout
Sent from my iPhone

On Mar 3, 2017, at 8:37 AM, Konkus, John <konkus.john@epa.gov> wrote:

We can help contact stakeholders. Amy Dewey, copied, is available to help. She has longstanding relationships with many of the stakeholders.

From: McInerney, Marianne (OST) [<mailto:marianne.mcinerney@dot.gov>]
Sent: Friday, March 3, 2017 9:33 AM
To: Hull, George <Hull.George@epa.gov>
Cc: Moore, Allison (OST) <A.Moore@dot.gov>; Grantham, Nancy
<Grantham.Nancy@epa.gov>; Konkus, John <konkus.john@epa.gov>; Milbourn, Cathy
<Milbourn.Cathy@epa.gov>
Subject: Re: CAFE discussion draft: joint DOT-EPA notice

Monday leaves very limited time to call stakeholders which is important to properly framing the issue and decision. I noted this when I spoke with John. I am on site at an event through 7pm Eastern. I can access email but limited time for discussion

Sent from my iPhone

On Mar 3, 2017, at 8:30 AM, Hull, George <Hull.George@epa.gov> wrote:

Marianne and Allison,

Reaching out to introduce myself as I understand that we will be working together on a joint EPA-DOT announcement for Monday. We will be back in touch after we have a chance to get further organized this morning. Thanks,

George Hull

Acting Associate Administrator

Office of Public Affairs

U.S. EPA

Tel. 202-564-0790

To: Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Hull, George[Hull.George@epa.gov]

From: Hope, Brian

Sent: Fri 3/10/2017 10:12:45 PM

Subject: Daily Reading File: March 10, 2017

[Daily Reading File.3.10.17a.pdf](#)

[Daily Reading File.3.10.17.pdf](#)



Correspondence Management System

Control Number: AX-17-000-5984

Printing Date: March 10, 2017 02:48:53



Citizen Information

Citizen/Originator: Randall, Gary L.

Organization: Michigan House of Representatives
Address: State Capitol, Lansing, MI 48913

Constituent: N/A

Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number: AX-17-000-5984 **Alternate Number:** N/A
Status: For Your Information **Closed Date:** N/A
Due Date: N/A **# of Extensions:** 0
Letter Date: Mar 2, 2017 **Received Date:** Mar 9, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: SNR-Signature Not Required **Signature Date:** N/A
File Code: 401_127_a General Correspondence Files Record copy
Subject: DRF - Michigan House Resolution No. 21. Encourage the president and other government agencies to continue efforts to prevent the introduction of new aquatic species into the Great Lakes from Chicago area waterway system and to consider new research and technologies
Instructions: For Your Information -- No action required
Instruction Note: N/A
General Notes: N/A
CC: OCIR - Office of Congressional and Intergovernmental Relations
OPA - Office of Public Affairs
OW - Office of Water -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
Ex. 6		R5	Mar 10, 2017

History

Action By	Office	Action	Date
Ex. 6		Forward control to R5	Mar 10, 2017



GARY L. RANDALL
CLERK OF THE HOUSE

HOUSE OF REPRESENTATIVES
STATE OF MICHIGAN

STATE CAPITOL
LANSING, MI 48913

March 2, 2017

President of the United States of America
President of the United States Senate
Speaker of the United States House of Representatives
Michigan Congressional Delegation
Director of the Michigan Department of Natural Resources
Commanders of the United States Army Corps of Engineers Great Lakes and Ohio River Division
and Mississippi Valley Division
Director of the United States Fish and Wildlife Service
Members of the Asian Carp Regional Coordinating Committee

Re: Michigan House Resolution No. 21.

The Michigan House of Representatives has adopted the enclosed House Resolution. Per the direction of the House of Representatives, I am transmitting a copy of the resolution to you.

Sincerely,

Gary L. Randall, Clerk
Michigan House of Representatives

GLR:dcs

Enclosure

RECEIVED
2017 MAR -9 AM 11:31
OFFICE OF THE
EXECUTIVE SECRETARIAT

STATE OF MICHIGAN



HOUSE OF REPRESENTATIVES

House Resolution No. 21

Offered by Representatives Hughes, Marino, Noble, Victory, Frederick, Canfield, Howell, Hernandez, Lilly, Kelly, Whiteford, LaSata, Pagel, Brann, Camilleri, Garcia, Roberts, Lower, Griffin, Maturen, Iden, Leutheuser, Sheppard, Graves, Vaupel, Webber, Runestad, McCready, Kesto, Lucido, Hertel, VanderWall, Hoitenga, Rendon, Miller, Hauck, Bellino, Barrett, Pagan, Yanez, Guerra, Sabo, Dianda, Clemente, LaFave, Yaroch, Farrington, Hornberger, Calley, Crawford, Bizon and Elder

A RESOLUTION TO ENCOURAGE THE PRESIDENT AND CONGRESS OF THE UNITED STATES, THE MICHIGAN DEPARTMENT OF NATURAL RESOURCES, THE UNITED STATES ARMY CORPS OF ENGINEERS, THE UNITED STATE FISH AND WILDLIFE SERVICE, AND OTHER AGENCIES TO CONTINUE EFFORTS TO PREVENT THE INTRODUCTION OF NEW AQUATIC SPECIES INTO THE GREAT LAKES FROM THE CHICAGO AREA WATERWAY SYSTEM AND TO CONSIDER NEW RESEARCH AND TECHNOLOGIES

WHEREAS, The Great Lakes and the people, industries, and communities that depend on them have suffered significant harm from the introduction of aquatic invasive species. Studies indicate that past invasions by sea lampreys, zebra mussels, and other aquatic species likely cost the Great Lakes region more than \$100 million annually, with impacts on fishing, power generation, manufacturing, municipal drinking water systems, tourism, and recreation; and

WHEREAS, The introduction of new aquatic invasive species remains a real and imminent threat. Bighead and silver carp are less than 50 miles from Lake Michigan. If they were to invade the Great Lakes, they could displace native species, disrupt fisheries, and injure boaters, negatively impacting the \$7 billion Great Lakes sport fishery and \$5 billion Great Lakes boating industry; and

WHEREAS, There are ongoing efforts by the state of Michigan, the other Great Lakes states, and the federal government to prevent the introduction of bighead and silver carp and other new aquatic invasive species. Among other actions, the Michigan Department of Natural Resources employs active enforcement, outreach, education, and monitoring for bighead and silver carp while the Illinois Department of Natural Resources, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and other federal agencies work to prevent bighead and silver carp from reaching the Great Lakes; and

WHEREAS, New research and technologies can enhance action already being taken to prevent and control aquatic invasive species. Ozone, carbon dioxide, hot water, sound, and microparticles have all shown promise in preventing an invasion and are being actively studied. Restoring native fish populations may also help support a healthy fish community and provide ecosystem resiliency to limit the spread of aquatic invasive species; now, therefore, be it

RESOLVED BY THE HOUSE OF REPRESENTATIVES, That we encourage the President and Congress of the United States, the Michigan Department of Natural Resources, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and other agencies to continue efforts to prevent the introduction of new aquatic species, specifically bighead, silver, and black carp, into the Great Lakes from the Chicago Area Waterway System; and be it further

RESOLVED, That we encourage the open consideration of new research and the development of new technologies that may provide innovative and effective methods to prevent and control aquatic invasive species; and be it further

RESOLVED, That copies of this resolution be transmitted to the President of the United States, President of the United States Senate, Speaker of the House of Representatives, members of the Michigan congressional delegation, Director of the Michigan Department of Natural Resources, the commanders of the United States Army Corps of Engineers Great Lakes and Ohio River Division and Mississippi Valley Division, the Director of the United States Fish and Wildlife Service, and the other members of the Asian Carp Regional Coordinating Committee.

Adopted by the House of Representatives, March 1, 2017.



Sam E. Randall

CLERK OF THE HOUSE OF REPRESENTATIVES



Correspondence Management System

Control Number: AX-17-000-6031

Printing Date: March 10, 2017 02:26:04



Citizen Information

Citizen/Originator: White, Jonathan

Organization: N/A

Address: Address Unknown

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-6031

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Mar 27, 2017

of Extensions: 0

Letter Date: Mar 10, 2017

Received Date: Mar 10, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: EML (E-Mail)

Priority Code: Normal

Signature: DX-Direct Reply

Signature Date: N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.

Subject: DRF - Coal Power Plant Regulations

Instructions: DX-Respond directly to this citizen's questions, statements, or concerns

Instruction Note: N/A

General Notes: N/A

CC: Kristien Knapp - AO-IO
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Ex. 6		OAR	Mar 10, 2017	Mar 27, 2017	N/A
	Instruction: DX-Respond directly to this citizen's questions, statements, or concerns				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
Jacqueline Leavy	OEX	Assign OAR as lead office	Mar 10, 2017

Date: Fri Mar 10 09:30:19 EST 2017
From: Hope.Brian@epamail.epa.gov
To: CMS.OEX@epamail.epa.gov
Subject: FW: Coal Power Plant Regs

For the Daily Reading File

-----Original Message-----

From: Jonathan White [mailto:**Personal Email/Ex. 6**]
Sent: Friday, March 10, 2017 2:01 AM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: Coal Power Plant Regs

Mr. Pruitt,

I am a resident of Oklahoma and have been employed by the Oil & Gas industry since I graduated from the University of Oklahoma in 2005. I am a contract land man for Chesapeake, Devon, Continental, Newfield, and several start-ups that have obtained funding from GE Capital, EnCap, etc...

I request that you keep emission regulations in place that continue to cause headaches for coal burning powerplants. Natural Gas is far cleaner than "clean-coal" and currently Natural Gas is very, very cheap. Let's guide electricity producers to build Nat. Gas powerplants for electricity generation, and feel confident that we are doing a service to our air quality, as well as the industry that is a boon to the economy.

These coal plants are aging, and are dinosaurs for energy production (based on my conversation with an engineer at OG & E). We can create jobs that build new plants that use Nat. Gas as their fuel, and boost an economy that is currently in a bear market.

If we encourage Nat. Gas over "clean-coal", our air quality will improve, our economy will continue to thrive and our children, grandchildren, and great-grandchildren will thank us for the jobs, air, and energy abundance that we left them.

Cheers, and congratulations on your recent appointment. Let's Make America Great Again, and make Nat Gas Great Again!

Thanks,
JW



Correspondence Management System

Control Number: AX-17-000-6034

Printing Date: March 10, 2017 02:20:19



Citizen Information

Citizen/Originator: Surma, John

Organization: Adams and Reese, LLP

Address: 1221 McKinney Street, Houston, TX 77010

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-6034

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Mar 24, 2017

of Extensions: 0

Letter Date: Mar 9, 2017

Received Date: Mar 10, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: EML (E-Mail)

Priority Code: Normal

Signature: AA-OECA-Assistant

Signature Date: N/A

Administrator - OECA

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Correspondence concerning our client, Magnolia Waco Properties, LLC, d/b/a Magnolia Homes (the construction company owned by Chip and Joanna Gaines of Fixer Upper).

Instructions: AA-OECA-Prepare draft response for signature by the Assistant Administrator for OECA

Instruction Note: N/A

General Notes: OECA please contact Brian Hope for the 3 pages of CBI included in the original email. CBI documents are not uploaded in CMS..

CC: Jared Hautamaki - AO-IO
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Ex. 6	OEX	OECA	Mar 10, 2017	Mar 24, 2017	N/A
Instruction: AA-OECA-Prepare draft response for signature by the Assistant Administrator for OECA					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History



Attorneys at Law

Alabama
Florida
Louisiana
Mississippi
South Carolina
Tennessee
Texas
Washington, DC

March 9, 2017

John D. Surma

Direct: 713.308.0148
E-Fax: 713.308.4084
john.surma@arlaw.com

Via USPS and Email: Pruitt.Scott@EPA.gov

Administrator Scott E. Pruitt
USEPA Headquarters
William Jeggerson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

Re: Magnolia Waco Properties

Dear Administrator Pruitt:

First, our client and I would like to congratulate you on your confirmation as Administrator of the Environmental Protection Agency. We look forward to the EPA becoming a more reasonable, more business-friendly, and less punitive agency under your direction than it has been over the past eight years.

Adams and Reese, LLP, is counsel for Magnolia Waco Properties, LLC, d/b/a Magnolia Homes ("Magnolia Homes"). Magnolia Homes is the construction business owned by Chip and Joanna Gaines of HGTV's *Fixer Upper*. Magnolia Homes is the entity that performs the renovations depicted in *Fixer Upper*.

Beginning in early 2016, and continuing through January 10, 2017, Magnolia Homes earnestly worked towards a resolution of alleged violations of the EPA's Lead-Safe Renovation, Repairs, and Painting Rule (RRP Rule) with the EPA and its attorneys. The last communication we had with the EPA was to transmit a cash settlement offer on January 10. We presume communications stopped because of the timing of the inauguration of President Trump, some of President Trump's Executive Orders, and the time it would take to draft and file a petition against Magnolia Homes.

We are reaching out to you as, at least under Administrator McCarthy, the EPA was treating Magnolia Homes in a substantially and demonstrably harsher manner than any other subject of an RRP Rule enforcement action or settlement had ever been treated. We are hopeful that under the Trump Administration and your time as Administrator of the EPA, a more reasonable, rational, and fact-based approach will be taken to resolve these matters with our client.

As an information point, prior to your confirmation, we reached out to Senators Cruz and Cornyn and requested any assistance they could offer in dealing with the EPA. Both Senators have responded to those requests and have advised that they would be back in touch with us when they had information they could share. We are not seeking preferential treatment of Magnolia Homes- quite the contrary. We are asking that Magnolia Homes be treated like others who are of a similar size, have similar backgrounds and knowledge, and have similar levels of sophistication and culpability.

Throughout its life, Magnolia Homes has been a “mom and pop” construction firm that has worked on some 200 projects in the Waco, Texas, area over the past eight years. Other than the renovations performed for *Fixer Upper*, Magnolia Homes does little work, other than occasional projects for charitable organizations, friends and family, or for use by one of the other businesses operated by the Gaines (which typically would not fall under the RRP Rule).

Magnolia Homes has operated at a loss over the past three years. In fact, in 2016 Magnolia Homes experienced a net loss of over one million dollars, bringing the three year total of losses to nearly two million dollars. The Gaines continue operating the construction company at a loss as it is the vehicle for performing the renovations on *Fixer Upper*. Given its limited operation, Magnolia Homes is expected to continue to operate at a loss for the foreseeable future. Despite its financial challenges and limited function, Magnolia Homes has achieved compliance and has committed to continuing compliance with the RRP Rules.

Magnolia Homes was unaware of the RRP Rules but, within a short time of being notified by the EPA of the alleged RRP Rule violations, key personnel became both RRP Rule and asbestos certified. Despite the fact that Magnolia Homes is a small construction company that lacks the sophistication, experience, and resources of entities like Lowe's, Home Depot, Sears, and Pella Windows and Doors, the EPA treated Magnolia Homes more harshly than it did those large, national entities. The EPA, to date, has maintained the position that Magnolia Homes is more sophisticated and knowledgeable than the typical small construction company, that Magnolia Homes should be treated like a large and highly sophisticated entity, but bases this conclusion on nothing more than the fact that HGTV has been able to turn the program into a successful franchise.

The EPA reviewed *Fixer Upper* episodes from seasons one through three and, in each episode that involved renovations of a home built prior to 1978, the EPA alleged numerous violations of the RRP Rule. The EPA never visited a single Magnolia Homes worksite, interviewed a single Magnolia Homes employee, or spoken to one owner of one of the involved properties. Likewise, the EPA has never taken any step to gather any physical evidence confirming RRP Rule violations.

Though the EPA has never visited a worksite prior to or during the filming of an episode of *Fixer Upper*, the EPA has maintained to date that Magnolia Homes remains non-compliant. Though we have explained that none of the work performed during the filming of an episode

triggers RRP Rule requirements because the RRP Rule-related work is performed before filming, the EPA has greeted the explanation with skepticism and discounts the claims. We would welcome you or another representative of the EPA to visit one of these worksites to see what we claimed is, in fact, the truth.

Lowes, Sears Home Improvement, a division of Home Depot, and the largest distributor of Pella Windows and Doors in the US have all been subject to enforcement actions under the RRP Rules. Lowes (established in 1946, has 1840 stores nationwide) settled its case with the EPA for \$500,000, Sears Home Improvement (58 offices in 45 states) for \$400,000, THD At-Home Services, Inc., a division of Home Depot (established in 1978, has more than 2200 stores nationally), settled its case for \$37,065, and Gunton Corp. (established in 1932), Pella Windows and Doors (established in 1925) largest distributor with some 300 plus employees, settled its case for \$2,400. Not one of these four cases involved any sort of SEP. In contrast, the EPA proposed some \$798,000 in penalties for Magnolia Homes.

Of the nearly 250 cases for which information is publicly available, the vast majority involve penalties or proposed penalties of less than \$10,000. Amazingly, cases involving certified trainers and others who clearly had knowledge of the rules, who “train” others on compliance with the RRP Rules, are routinely resolved for under \$1,000. In fact, only two cases (Sears and Lowes) have actually resulted in six figure penalties. In one case where the EPA was pursuing some \$184,000 in penalties, the alleged violator failed to answer and the EPA moved to dismiss the case rather than seek a default judgment or in absentia prosecution. For your convenience, enclosed is a compilation of all of the RRP Rule settlements and enforcement actions that could be located online as of January 16, 2017.

In the course of the negotiations with the EPA, Magnolia Homes agreed to perform two projects the EPA has indicated they very much would like Magnolia to perform. Given the manner the EPA treated Magnolia Homes during the negotiations and given the incredibly heavy-handedness of the EPA towards Magnolia Homes, Chip and Joanna Gaines are less inclined to do these projects. However, for your convenience, attached to this email are descriptions of those projects.

Despite the fact that Magnolia Homes expects these projects will require cash expenditures of \$102,000 and though they conservatively value them at \$2,500,000, the EPA was still pressing for a significant cash payment from Magnolia Homes on top of everything else it would have done if an amicable settlement could have been reached. Unfortunately, given the manner in which the EPA has negotiated to date, it is not possible to provide a reasonable estimate of the amount the EPA expected Magnolia to pay, though based on our last communication with the EPA, it is clear that they will require payment of more than \$50,000.

Dealing with the EPA, as is true will dealing with all regulatory agencies, has been difficult. In this case, we have faced a refusal to follow published policy, the rejection of plain language definition of terms, inconsistency in statements made by different EPA representatives,

March 9, 2017

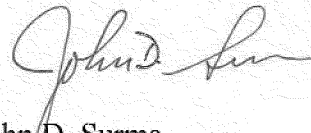
Page 4

and claims that we are not fairly or accurately representing Magnolia Homes' work practices since our client learned of the RRP Rules. Despite presentations concerning the size of Magnolia Homes, the lack of Magnolia Homes' sophistication, and the disparate treatment of Magnolia Homes as compared to others who allegedly violated the rules, the EPA has been steadfast in its insistence that the projects and significant cash payment be made.

We would appreciate whatever assistance you can provide to help us reach a reasonable resolution of these allegations on behalf of Magnolia Homes. Please let us know if there is anything we can provide you that will help you help our client. Thank you for your time and consideration.

Very truly yours,

ADAMS AND REESE LLP

A handwritten signature in dark ink, appearing to read "John D. Surma", written in a cursive style.

John D. Surma

JDS/smb
Enclosure



Correspondence Management System

Control Number: AX-17-000-6066

Printing Date: March 10, 2017 03:43:22



Citizen Information

Citizen/Originator: Tayloe, Kerene

Organization: WE ACT for Environmental Justice
Address: 50 F Street, NW, 7th Floor, Washington, DC 20001

Hudson, Drew

Organization: N/A
Address: Address Unknown

James, Sarah

Organization: Arctic Village - Fairbanks, Alaska
Address: Address Unknown

Martinez, Cecilia

Organization: Center for Earth, Energy & Environment
Address: 216 Cecil Street, SE, Minneapolis, MN 55414

Johnson, Brad

Organization: Climate Hawks Vote
Address: Address Unknown

Lewis, Sharon E.

Organization: Connecticut Coalition for Environmental Justice
Address: 10 Jefferson Street, Hartford, CT 06106

Garcia, Raul

Organization: Earthjustice
Address: Address Unknown

Ewall, Mike

Organization: Energy Justice Network
Address: 1434 Elbridge Street, Philadelphia, PA 19149

Brewer, Rose

Organization: Environmental Justice Advocates of Minnesota
Address: Address Unknown

Finley-Brook, Mary

Organization: University of Richmond
Address: Address Unknown

Magana, Mark

Organization: Greenlatinos
Address: Address Unknown

Miller, Pamela K.

Organization: Alaska Community Action on Toxics
Address: 505 West Northern Lights Boulevard, Anchorage, AK 99503

Yoshitani, Miya

Organization: Asian Pacific Environmental Network, Oakland, CA
Address: Address Unknown

Newell, Brent

Organization: Center on Race, Poverty and the Environment
Address: 450 Geary Street, San Francisco, CA 94102



Correspondence Management System

Control Number: AX-17-000-6066

Printing Date: March 10, 2017 03:43:22



Bravo, Jose

Organization: Coming Clean
Address: Address Unknown

Wright, Beverly

Organization: Deep South Center for Environmental Justice at Dillard University in New Orleans
Address: Address Unknown

Copeland, William

Organization: East Michigan Environmental Action Council
Address: 4605 Cass Avenue, Detroit, MI 48201

Takvorian, Diane

Organization: Environmental Health Coalition in national City, CA.
Address: Address Unknown

Roberts, Michele

Organization: Environmental Justice & Health Alliance for Chemical Policy Reform
Address: Address Unknown

Mangaliman, Jill

Organization: Got Green in Seattle, WA
Address: Address Unknown

McClain, Mildred

Organization: Harambee House
Address: Address Unknown

Keys, Charlotte L.

Organization: Jesus People Against Pollution
Address: PO Box 464, Colombia, MS 39429

Horne, Savi

Organization: Land Loss Prevention Center
Address: Address Unknown

McGuire, Terry

Organization: Earthjustice
Address: Address Unknown

Boles, Laureen

Organization: New Jersey Environmental Justice Alliance
Address: Address Unknown

Smyth, McGregor

Organization: New York Lawyers for the Public Interest
Address: Address Unknown

Arguello, Martha Dina

Organization: Physicians for Social Responsibility, Los Angeles
Address: Address Unknown

Fields, Leslie G.

Organization: Sierra Club
Address: 50 F Street NW, Washington, DC 20001



Correspondence Management System

Control Number: AX-17-000-6066

Printing Date: March 10, 2017 03:43:22



Ferris, Deeohn

Organization: Sustainable Community Development Group, Incorporated
Address: Post Office Box 15395, Washington, D.C. 20003

Garcia, Robert

Organization: The City Project
Address: 1055 Wilshire Boulevard, Los Angeles, CA 90017-2499

Crawford, Kendyl

Organization: VA Interfaith Power & Light
Address: Address Unknown

Heil, John

Organization: N/A
Address: Address Unknown

Lauderdale, Burt

Organization: Kentuckians for the Commonwealth
Address: Address Unknown

Wasserman, Kimberly

Organization: Little Village Environmental Justice Organization
Address: Address Unknown

Womack, Joe

Organization: Mobile Environmental Justice Action Coalition
Address: Address Unknown

Sheats, Nicky

Organization: New Jersey Environmental Justice Alliance
Address: 50 F Street, NW, 7th Floor, Washington, DC 20001

Ong, Huy

Organization: OPAL Environmental Justice Oregon
Address: Address Unknown

Clarke, Jennifer R

Organization: Public Interest Law Center of Philadelphia
Address: Address Unknown

Baxter, Kirtrina

Organization: Soil Generation
Address: Address Unknown

Parras, Juan

Organization: Texas Environmental Justice Advocacy Services
Address: 6731 Harrisburg Boulevard, Houston, TX 77011

Boseman, Brendolyn Jenkins

Organization: The Imani Group, Inc.
Address: Address Unknown

Szakos, Joe

Organization: Virginia Organizing
Address: Address Unknown

Ihsaan, Mary



Correspondence Management System

Control Number: AX-17-000-6066

Printing Date: March 10, 2017 03:43:22



Organization: N/A
Address: Address Unknown

Shepard, Peggy M

Organization: WE ACT for Environmental Justice
Address: 1854 Amsterdam Avenue, 2nd Floor, New York, NY 10031

Bang-Lau, Tammy

Organization: The Labor Community Strategy Center
Address: Address Unknown

Bullard, Robert D.

Organization: Texas Southern University
Address: 3100 Cleburne Avenue, Houston, TX 77004

Holloman, Erica L.

Organization: Southeast CARE Program
Address: Post Office Box 1346, 1375 Greate Road, Gloucester Point, VA 23062-1346

Hall, Devon

Organization: Rural Empowerment Association For Community Help (REACH)
Address: 1912 W. Wards Bridge Road, Warsaw, NC 28398

Almanza, Susana

Organization: People Organized in Defense of Earth and Her Resources in Austin, TX
Address: Address Unknown

Meiklejohn, Douglas

Organization: New Mexico Environmental Law Center
Address: 1405 Luisa Street, Santa Fe, NM 87505

Rushdan, Nashid A.

Organization: Mobile Environmental Justice Action Coalition
Address: Address Unknown

Moore, Richard

Organization: Los Jardines Institute
Address: Address Unknown

Woodberry, Leo

Organization: Kingdom Living Temple in Florence, SC
Address: Address Unknown

Goldtooth, Tom

Organization: Indigenous Environmental Network in Bemidji, Minnesota
Address: Address Unknown

Wilkins, Donele

Organization: Green Door Initiative, LLC
Address: 5555 Conner Street, Detroit, MI 48213

Kang, Helen H.

Organization: Golden Gate University School of Law
Address: 536 Mission Street, San Francisco, CA 94105-2968

Anderson, Judith M

Organization: Environmental Justice Action Group of WNY



Correspondence Management System

Control Number: AX-17-000-6066

Printing Date: March 10, 2017 03:43:22



Address: Address Unknown

Davis, Edward

Organization: Emory & Henry College

Address: Address Unknown

Williams, Guy O.

Organization: Detroiters Working for Environmental Justice

Address: 4750 Woodward Avenue, Detroit, MI 48201

Guidel, Byron R.

Organization: Communities for a Better Environment in Oakland, CA

Address: Address Unknown

Carrasquillo, Nelson

Organization: Environmental Justice Leadership Forum on Climate Change Region 2

Address: 290 Broadway, Atlanta, GA 30303

Mair, Aaron

Organization: Arbor Hill Environmental Justice Corporation

Address: Address Unknown

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number:	AX-17-000-6066	Alternate Number:	N/A
Status:	Pending	Closed Date:	N/A
Due Date:	Mar 27, 2017	# of Extensions:	0
Letter Date:	Mar 10, 2017	Received Date:	Mar 10, 2017
Addressee:	AD-Administrator	Addressee Org:	EPA
Contact Type:	EML (E-Mail)	Priority Code:	Normal
Signature:	AD-Administrator	Signature Date:	N/A
File Code:	404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.		
Subject:	Proposed budget cuts to environmental justice communities		
Instructions:	AD-Prepare draft response for the Administrator's signature		
Instruction Note:	N/A		
General Notes:	N/A		
CC:	Jared Hautamaki - AO-IO OAR - Office of Air and Radiation -- Immediate Office OCFO - OCFO -- Immediate Office OCSPP - OCSPP - Immediate Office OITA - Office of International and Tribal Affairs OLEM - Office of Land and Emergency Management OPA - Office of Public Affairs OW - Office of Water -- Immediate Office		

Lead Information

Lead Author: N/A

Fri Mar 10 13:34:25 EST 2017
Hope.Brian@epamail.epa.gov
FW: Letter from Some Members of the Environmental Justice Community
To: CMS.OEX@epamail.epa.gov

For the Daily Reading File

From: Kerene Tayloe [mailto:kerene@weact.org]
Sent: Friday, March 10, 2017 12:39 PM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>
Cc: Adrienne Hollis <adrienne@weact.org>
Subject: Letter from Some Members of the Environmental Justice Community

Dear Administrator Pruitt,

Members of the Environmental Justice community have come together to share our concerns about the future of the EPA. We ask that you review this attached letter. We hope you take our views into serious consideration.

We look forward to your response.

Kerene Tayloe

Federal Policy Associate

WE ACT for Environmental Justice

50 F Street, NW, Eighth Floor

Washington, DC 20001

office: [202-548-4585](tel:202-548-4585)

Twitter: @GreenKerene

Follow us on [Facebook](#) | [Twitter](#) | [Instagram](#)

WE ACT for Environmental Justice, is a Northern Manhattan community-based organization whose mission is to build healthy communities by assuring that people of color and/or low-income participate meaningfully in the creation of sound and fair environmental health and protection policies and practices.

The Honorable Scott Pruitt, Administrator
Office of the Administrator, Mailstop 1101A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Pruitt;

One week ago, the White House's proposed budget cuts for EPA were released. President Trump stated that his proposed budget would put "America first". That is NOT the case, unless the proposed budget is designed for middle class and above white Americans. The proposed EPA budget cuts simply translate to fewer protections for people of color, those with low socioeconomic status, vulnerable populations – those AMERICANS most susceptible to hazardous exposures and most at risk for ongoing and worsening health conditions – such as asthma and other respiratory diseases, cancers, lead poisoning, to name a few.

The proposed budget cuts to EPA have environmental justice communities enraged – and rightly so. Currently, EPA's proposed budget plans include the elimination of its Office of Environmental Justice, an office most environmental justice communities are quite familiar with. One of the programs in the crosshairs deals with brownfields. Brownfields are properties that may have hazardous substances, pollutants or contaminants present. Currently, EPA has a Brownfields Program which provides grants and technical assistance to communities, states, tribes and others to address (safely clean up and reuse) those properties. In 2005, there were more than 450,000 brownfield sites across the United States. That number has most likely doubled in the 10+ years since that report. The majority of those brownfields are located in environmental justice communities.

Proposed cuts to Superfund, environmental education, climate change initiatives and needed funding for communities – particularly Alaskan native villages will detrimentally affect millions of Americans. Impacts to children are of particular concern, as globally, 1 in 4 deaths occur in children 1 to 5 years old as a result of air pollution and other preventable environmental factors. Lead contamination, poor indoor and outdoor air quality, water contamination are all issues inherent to environmental justice communities.

EJ 2020 and other programs designed to address the disproportionate impacts from environmental contamination on environmental justice communities are necessary and should not be sacrificed to increase the military's \$600 billion budget.

Instead of adding money to a budget to fight war on foreign soil, additional funding is needed to fight a war here in the United States that environmental justice communities fight every day - the war against environmental racism, air and water pollution, soil contamination, unsafe drinking water, environmental degradation, and most important, increased adverse health effects and premature death. The war is here...at home.

Sincerely,

Drew Hudson
198-methods

Sarah James
Arctic Village *

Dr. Cecilia Martinez
Center for Earth, Energy &
Democracy*

Brad Johnson
Climate Hawks Vote

Sharon E. Lewis
Connecticut Coalition for
Environmental Justice*

Raul Garcia
Earthjustice

Mike Ewall
Energy Justice Network*

Dr. Rose Brewer
Environmental Justice
Advocates of Minnesota*

Dr. Mary Finley-Brook
Environmental Studies
Program, University of
Richmond
Mark Magana
GreenLatinos

Pamela Miller
Alaska Community Action on
Toxics*

Miya Yoshitani
Asian Pacific Environmental
Network*

Brent Newell, Esq.
Center on Race, Poverty & the
Environment*

Jose Bravo
Coming Clean*

Dr. Beverly Wright
Deep South Environmental Justice
Center *

William Copeland
East Michigan Environmental
Action Council*

Diane Takvorian
Environmental Health Coalition*

Michele Roberts
Environmental Justice Health
Alliance for Chemical Policy
Reform*

Jill Mangaliman
Got Green*

Dr. Mildred McClain
Harambee House*

Aaron Mair
Arbor Hill Environmental
Justice*

Nelson Carrasquillo
CATA (The
Farmworkers Support
Committee) *

Hilton Kelley
CIDA, Inc.*

Byron Ramos Guidel
Communities for a Better
Environment*

Guy O. Williams
Detroitans Working for
Environmental Justice*

Edward Davis
Emory & Henry College

Judith Anderson
Environmental Justice
Action Group of Western
New York*

Helen Kang
Environmental Law and
Justice Clinic, Golden
Gate University School
of Law*

Donele Wilkins
Green Door Initiative,
Inc.*

Tom Goldtooth
Indigenous
Environmental Network*

Dr. Charlotte L. Keys Jesus People Against Pollution*	Burt Lauderdale Kentuckians for the Commonwealth*	Leo Woodberry Kingdom Living Temple*
Savi Horne Land Loss Prevention Center*	Kimberly Wasserman Little Village Environmental Justice Organization*	Richard Moore Los Jardines Institute (The Gardens Institute) *
Terry McGuire Earthjustice	Joe Womack Mobile Environmental Justice Action Coalition*	Nashid A. Rushdan Mobile Environmental Justice Action Coalition*
Laureen Boles New Jersey Environmental Justice Alliance*	Nicky Sheats New Jersey Environmental Justice Alliance*	Douglas Meiklejohn New Mexico Environmental Law Center
McGregor Smyth New York Lawyers for the Public Interest	Huy Ong OPAL Environmental Justice Oregon*	Susana Almanza People Organized in Defense of Earth and Her Resources*
Martha Dina Arguello Physicians for Social Responsibility – Los Angeles*	Jennifer R. Clarke Public Interest Law Center	Devon J Hall Sr. Rural Empowerment Association for Community Help*
Leslie Fields Sierra Club	Kirtrina Baxter Soil Generation*	Dr. Erica Holloman Southeast Care Coalition*
Deeohn Ferris Sustainable Community Development Group*	Juan Parras TEJAS*	Dr. Robert Bullard Texas Southern University*
Robert Garcia The City Project*	Brendolyn Jenkins Boseman The Imani Group, Inc.*	Tammy Bang-Luu The Labor/Community Strategy Center*
Kendyl Crawford VA Interfaith Power & Light	Joe Szakos Virginia Organizing	Peggy Shepard WE ACT for Environmental Justice*
John Heil	Mary Ihsaan	

***Denotes an Environmental Justice Organization/Advocate**



Correspondence Management System

Control Number: AX-17-000-5984

Printing Date: March 10, 2017 02:48:53



Citizen Information

Citizen/Originator: Randall, Gary L.

Organization: Michigan House of Representatives

Address: State Capitol, Lansing, MI 48913

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5984 **Alternate Number:** N/A
Status: For Your Information **Closed Date:** N/A
Due Date: N/A **# of Extensions:** 0
Letter Date: Mar 2, 2017 **Received Date:** Mar 9, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: SNR-Signature Not Required **Signature Date:** N/A
File Code: 401_127_a General Correspondence Files Record copy
Subject: DRF - Michigan House Resolution No. 21. Encourage the president and other government agencies to continue efforts to prevent the introduction of new aquatic species into the Great Lakes from Chicago area waterway system and to consider new research and technologies
Instructions: For Your Information -- No action required
Instruction Note: N/A
General Notes: N/A
CC: OCIR - Office of Congressional and Intergovernmental Relations
OPA - Office of Public Affairs
OW - Office of Water -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
Ex. 6		R5	Mar 10, 2017

History

Action By	Office	Action	Date
Brenda Salvador	OEX	Forward control to R5	Mar 10, 2017



HOUSE OF REPRESENTATIVES
STATE OF MICHIGAN

GARY L. RANDALL
CLERK OF THE HOUSE

STATE CAPITOL
LANSING, MI 48913

March 2, 2017

President of the United States of America
President of the United States Senate
Speaker of the United States House of Representatives
Michigan Congressional Delegation
Director of the Michigan Department of Natural Resources
Commanders of the United States Army Corps of Engineers Great Lakes and Ohio River Division
and Mississippi Valley Division
Director of the United States Fish and Wildlife Service
Members of the Asian Carp Regional Coordinating Committee

Re: Michigan House Resolution No. 21.

The Michigan House of Representatives has adopted the enclosed House Resolution. Per the direction of the House of Representatives, I am transmitting a copy of the resolution to you.

Sincerely,

Gary L. Randall, Clerk
Michigan House of Representatives

GLR:dc

Enclosure

RECEIVED
2017 MAR -9 AM 11:31
OFFICE OF THE
EXECUTIVE SECRETARIAT

STATE OF MICHIGAN



HOUSE OF REPRESENTATIVES

House Resolution No. 21

Offered by Representatives Hughes, Marino, Noble, Victory, Frederick, Canfield, Howell, Hernandez, Lilly, Kelly, Whiteford, LaSata, Pagel, Brann, Camilleri, Garcia, Roberts, Lower, Griffin, Maturen, Iden, Leutheuser, Sheppard, Graves, Vaupel, Webber, Runestad, McCready, Kesto, Lucido, Hertel, VanderWall, Hoitenga, Rendon, Miller, Hauck, Bellino, Barrett, Pagan, Yanez, Guerra, Sabo, Dianda, Clemente, LaFave, Yaroch, Farrington, Hornberger, Calley, Crawford, Bizon and Elder

A RESOLUTION TO ENCOURAGE THE PRESIDENT AND CONGRESS OF THE UNITED STATES, THE MICHIGAN DEPARTMENT OF NATURAL RESOURCES, THE UNITED STATES ARMY CORPS OF ENGINEERS, THE UNITED STATE FISH AND WILDLIFE SERVICE, AND OTHER AGENCIES TO CONTINUE EFFORTS TO PREVENT THE INTRODUCTION OF NEW AQUATIC SPECIES INTO THE GREAT LAKES FROM THE CHICAGO AREA WATERWAY SYSTEM AND TO CONSIDER NEW RESEARCH AND TECHNOLOGIES

WHEREAS, The Great Lakes and the people, industries, and communities that depend on them have suffered significant harm from the introduction of aquatic invasive species. Studies indicate that past invasions by sea lampreys, zebra mussels, and other aquatic species likely cost the Great Lakes region more than \$100 million annually, with impacts on fishing, power generation, manufacturing, municipal drinking water systems, tourism, and recreation; and

WHEREAS, The introduction of new aquatic invasive species remains a real and imminent threat. Bighead and silver carp are less than 50 miles from Lake Michigan. If they were to invade the Great Lakes, they could displace native species, disrupt fisheries, and injure boaters, negatively impacting the \$7 billion Great Lakes sport fishery and \$5 billion Great Lakes boating industry; and

WHEREAS, There are ongoing efforts by the state of Michigan, the other Great Lakes states, and the federal government to prevent the introduction of bighead and silver carp and other new aquatic invasive species. Among other actions, the Michigan Department of Natural Resources employs active enforcement, outreach, education, and monitoring for bighead and silver carp while the Illinois Department of Natural Resources, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and other federal agencies work to prevent bighead and silver carp from reaching the Great Lakes; and

WHEREAS, New research and technologies can enhance action already being taken to prevent and control aquatic invasive species. Ozone, carbon dioxide, hot water, sound, and microparticles have all shown promise in preventing an invasion and are being actively studied. Restoring native fish populations may also help support a healthy fish community and provide ecosystem resiliency to limit the spread of aquatic invasive species; now, therefore, be it

RESOLVED BY THE HOUSE OF REPRESENTATIVES, That we encourage the President and Congress of the United States, the Michigan Department of Natural Resources, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and other agencies to continue efforts to prevent the introduction of new aquatic species, specifically bighead, silver, and black carp, into the Great Lakes from the Chicago Area Waterway System; and be it further

RESOLVED, That we encourage the open consideration of new research and the development of new technologies that may provide innovative and effective methods to prevent and control aquatic invasive species; and be it further

RESOLVED, That copies of this resolution be transmitted to the President of the United States, President of the United States Senate, Speaker of the House of Representatives, members of the Michigan congressional delegation, Director of the Michigan Department of Natural Resources, the commanders of the United States Army Corps of Engineers Great Lakes and Ohio River Division and Mississippi Valley Division, the Director of the United States Fish and Wildlife Service, and the other members of the Asian Carp Regional Coordinating Committee.

Adopted by the House of Representatives, March 1, 2017.

CLERK OF THE HOUSE OF REPRESENTATIVES





Correspondence Management System

Control Number: AX-17-000-6031

Printing Date: March 10, 2017 02:26:04



Citizen Information

Citizen/Originator: **Citizen Name/Ex. 6**

Organization: N/A

Address: Address Unknown

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-6031 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Mar 27, 2017 **# of Extensions:** 0
Letter Date: Mar 10, 2017 **Received Date:** Mar 10, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: EML (E-Mail) **Priority Code:** Normal
Signature: DX-Direct Reply **Signature Date:** N/A
File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.
Subject: DRF - Coal Power Plant Regulations
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: Kristien Knapp - AO-IO
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Ex. 6		OAR	Mar 10, 2017	Mar 27, 2017	N/A
	Instruction: DX-Respond directly to this citizen's questions, statements, or concerns				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
Ex. 6		Assign OAR as lead office	Mar 10, 2017

Date: Fri Mar 10 09:30:19 EST 2017
From: Hope.Brian@epamail.epa.gov
To: CMS.OEX@epamail.epa.gov
Subject: FW: Coal Power Plant Regs

For the Daily Reading File

-----Original Message-----

From: **Personal Email/Ex. 6**
Sent: Friday, March 10, 2017 2:01 AM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: Coal Power Plant Regs

Mr. Pruitt,

I am a resident of Oklahoma and have been employed by the Oil & Gas industry since I graduated from the University of Oklahoma in 2005. I am a contract land man for Chesapeake, Devon, Continental, Newfield, and several start-ups that have obtained funding from GE Capital, EnCap, etc...

I request that you keep emission regulations in place that continue to cause headaches for coal burning powerplants. Natural Gas is far cleaner than "clean-coal" and currently Natural Gas is very, very cheap. Let's guide electricity producers to build Nat. Gas powerplants for electricity generation, and feel confident that we are doing a service to our air quality, as well as the industry that is a boon to the economy.

These coal plants are aging, and are dinosaurs for energy production (based on my conversation with an engineer at OG & E). We can create jobs that build new plants that use Nat. Gas as their fuel, and boost an economy that is currently in a bear market.

If we encourage Nat. Gas over "clean-coal", our air quality will improve, our economy will continue to thrive and our children, grandchildren, and great-grandchildren will thank us for the jobs, air, and energy abundance that we left them.

Cheers, and congratulations on your recent appointment. Let's Make America Great Again, and make Nat Gas Great Again!

Thanks,
JW



Correspondence Management System

Control Number: AX-17-000-6034

Printing Date: March 10, 2017 04:37:07



Citizen Information

Citizen/Originator: Surma, John

Organization: Adams and Reese, LLP

Address: 1221 McKinney Street, Houston, TX 77010

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-6034

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Mar 24, 2017

of Extensions: 0

Letter Date: Mar 9, 2017

Received Date: Mar 10, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: EML (E-Mail)

Priority Code: Normal

Signature: AA-OECA-Assistant

Signature Date: N/A

Administrator - OECA

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Correspondence concerning our client, Magnolia Waco Properties, LLC, d/b/a Magnolia Homes (the construction company owned by Chip and Joanna Gaines of Fixer Upper).

Instructions: AA-OECA-Prepare draft response for signature by the Assistant Administrator for OECA

Instruction Note: N/A

General Notes: OECA please contact Brian Hope for the 3 pages of CBI included in the original email. CBI documents are not uploaded in CMS..

CC: Jared Hautamaki - AO-IO
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Ex. 6	OEX	OECA	Mar 10, 2017	Mar 24, 2017	N/A
Instruction: AA-OECA-Prepare draft response for signature by the Assistant Administrator for OECA					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History



Attorneys at Law

Alabama
Florida
Louisiana
Mississippi
South Carolina
Tennessee
Texas
Washington, DC

March 9, 2017

John D. Surma

Direct: 713.308.0148
E-Fax: 713.308.4084
john.surma@arlaw.com

Via USPS and Email: Pruitt.Scott@EPA.gov

Administrator Scott E. Pruitt
USEPA Headquarters
William Jeggerson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

Re: Magnolia Waco Properties

Dear Administrator Pruitt:

First, our client and I would like to congratulate you on your confirmation as Administrator of the Environmental Protection Agency. We look forward to the EPA becoming a more reasonable, more business-friendly, and less punitive agency under your direction than it has been over the past eight years.

Adams and Reese, LLP, is counsel for Magnolia Waco Properties, LLC, d/b/a Magnolia Homes ("Magnolia Homes"). Magnolia Homes is the construction business owned by Chip and Joanna Gaines of HGTV's *Fixer Upper*. Magnolia Homes is the entity that performs the renovations depicted in *Fixer Upper*.

Beginning in early 2016, and continuing through January 10, 2017, Magnolia Homes earnestly worked towards a resolution of alleged violations of the EPA's Lead-Safe Renovation, Repairs, and Painting Rule (RRP Rule) with the EPA and its attorneys. The last communication we had with the EPA was to transmit a cash settlement offer on January 10. We presume communications stopped because of the timing of the inauguration of President Trump, some of President Trump's Executive Orders, and the time it would take to draft and file a petition against Magnolia Homes.

We are reaching out to you as, at least under Administrator McCarthy, the EPA was treating Magnolia Homes in a substantially and demonstrably harsher manner than any other subject of an RRP Rule enforcement action or settlement had ever been treated. We are hopeful that under the Trump Administration and your time as Administrator of the EPA, a more reasonable, rational, and fact-based approach will be taken to resolve these matters with our client.

As an information point, prior to your confirmation, we reached out to Senators Cruz and Cornyn and requested any assistance they could offer in dealing with the EPA. Both Senators have responded to those requests and have advised that they would be back in touch with us when they had information they could share. We are not seeking preferential treatment of Magnolia Homes- quite the contrary. We are asking that Magnolia Homes be treated like others who are of a similar size, have similar backgrounds and knowledge, and have similar levels of sophistication and culpability.

Throughout its life, Magnolia Homes has been a “mom and pop” construction firm that has worked on some 200 projects in the Waco, Texas, area over the past eight years. Other than the renovations performed for *Fixer Upper*, Magnolia Homes does little work, other than occasional projects for charitable organizations, friends and family, or for use by one of the other businesses operated by the Gaines (which typically would not fall under the RRP Rule).

Magnolia Homes has operated at a loss over the past three years. In fact, in 2016 Magnolia Homes experienced a net loss of over one million dollars, bringing the three year total of losses to nearly two million dollars. The Gaines continue operating the construction company at a loss as it is the vehicle for performing the renovations on *Fixer Upper*. Given its limited operation, Magnolia Homes is expected to continue to operate at a loss for the foreseeable future. Despite its financial challenges and limited function, Magnolia Homes has achieved compliance and has committed to continuing compliance with the RRP Rules.

Magnolia Homes was unaware of the RRP Rules but, within a short time of being notified by the EPA of the alleged RRP Rule violations, key personnel became both RRP Rule and asbestos certified. Despite the fact that Magnolia Homes is a small construction company that lacks the sophistication, experience, and resources of entities like Lowe's, Home Depot, Sears, and Pella Windows and Doors, the EPA treated Magnolia Homes more harshly than it did those large, national entities. The EPA, to date, has maintained the position that Magnolia Homes is more sophisticated and knowledgeable than the typical small construction company, that Magnolia Homes should be treated like a large and highly sophisticated entity, but bases this conclusion on nothing more than the fact that HGTV has been able to turn the program into a successful franchise.

The EPA reviewed *Fixer Upper* episodes from seasons one through three and, in each episode that involved renovations of a home built prior to 1978, the EPA alleged numerous violations of the RRP Rule. The EPA never visited a single Magnolia Homes worksite, interviewed a single Magnolia Homes employee, or spoken to one owner of one of the involved properties. Likewise, the EPA has never taken any step to gather any physical evidence confirming RRP Rule violations.

Though the EPA has never visited a worksite prior to or during the filming of an episode of *Fixer Upper*, the EPA has maintained to date that Magnolia Homes remains non-compliant. Though we have explained that none of the work performed during the filming of an episode

triggers RRP Rule requirements because the RRP Rule-related work is performed before filming, the EPA has greeted the explanation with skepticism and discounts the claims. We would welcome you or another representative of the EPA to visit one of these worksites to see what we claimed is, in fact, the truth.

Lowes, Sears Home Improvement, a division of Home Depot, and the largest distributor of Pella Windows and Doors in the US have all been subject to enforcement actions under the RRP Rules. Lowes (established in 1946, has 1840 stores nationwide) settled its case with the EPA for \$500,000, Sears Home Improvement (58 offices in 45 states) for \$400,000, THD At-Home Services, Inc., a division of Home Depot (established in 1978, has more than 2200 stores nationally), settled its case for \$37,065, and Gunton Corp. (established in 1932), Pella Windows and Doors (established in 1925) largest distributor with some 300 plus employees, settled its case for \$2,400. Not one of these four cases involved any sort of SEP. In contrast, the EPA proposed some \$798,000 in penalties for Magnolia Homes.

Of the nearly 250 cases for which information is publicly available, the vast majority involve penalties or proposed penalties of less than \$10,000. Amazingly, cases involving certified trainers and others who clearly had knowledge of the rules, who “train” others on compliance with the RRP Rules, are routinely resolved for under \$1,000. In fact, only two cases (Sears and Lowes) have actually resulted in six figure penalties. In one case where the EPA was pursuing some \$184,000 in penalties, the alleged violator failed to answer and the EPA moved to dismiss the case rather than seek a default judgment or in absentia prosecution. For your convenience, enclosed is a compilation of all of the RRP Rule settlements and enforcement actions that could be located online as of January 16, 2017.

In the course of the negotiations with the EPA, Magnolia Homes agreed to perform two projects the EPA has indicated they very much would like Magnolia to perform. Given the manner the EPA treated Magnolia Homes during the negotiations and given the incredibly heavy-handedness of the EPA towards Magnolia Homes, Chip and Joanna Gaines are less inclined to do these projects. However, for your convenience, attached to this email are descriptions of those projects.

Despite the fact that Magnolia Homes expects these projects will require cash expenditures of \$102,000 and though they conservatively value them at \$2,500,000, the EPA was still pressing for a significant cash payment from Magnolia Homes on top of everything else it would have done if an amicable settlement could have been reached. Unfortunately, given the manner in which the EPA has negotiated to date, it is not possible to provide a reasonable estimate of the amount the EPA expected Magnolia to pay, though based on our last communication with the EPA, it is clear that they will require payment of more than \$50,000.

Dealing with the EPA, as is true will dealing with all regulatory agencies, has been difficult. In this case, we have faced a refusal to follow published policy, the rejection of plain language definition of terms, inconsistency in statements made by different EPA representatives,

March 9, 2017

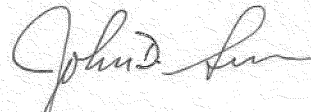
Page 4

and claims that we are not fairly or accurately representing Magnolia Homes' work practices since our client learned of the RRP Rules. Despite presentations concerning the size of Magnolia Homes, the lack of Magnolia Homes' sophistication, and the disparate treatment of Magnolia Homes as compared to others who allegedly violated the rules, the EPA has been steadfast in its insistence that the projects and significant cash payment be made.

We would appreciate whatever assistance you can provide to help us reach a reasonable resolution of these allegations on behalf of Magnolia Homes. Please let us know if there is anything we can provide you that will help you help our client. Thank you for your time and consideration.

Very truly yours,

ADAMS AND REESE LLP

A handwritten signature in dark ink, appearing to read "John D. Surma", written in a cursive style.

John D. Surma

JDS/smb
Enclosure

To: Schnare, David[schnare.david@epa.gov]
From: Grantham, Nancy
Sent: Wed 3/8/2017 6:11:11 PM
Subject: We are on phone

With dot - question on status of document - can you come to 3415 - know you are getting lunch

Thx ng

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: DC-WJCN-3402-M@epa.gov
Sent: Tue 3/7/2017 2:42:03 AM
Subject: WWEMA
[image2017-03-06-214203.pdf](#)

WWEMA 44th WASHINGTON FORUM - SPEAKER REGISTRATION

REGISTRATION (NOTE: Online registration is available at www.wwema.org/washingtonforum.php)

CONTACT INFORMATION (Please make copies of this form for additional registrants.)

Full Name: DAVID Schnare First Name (for badge) David
Title: Asst. Dep. Administrator
Company: U.S. EPA
Street Address: 1200 Penn. Ave. NW
City: WASH. DC State: DC Zip Code: 20006
Phone: 202-564-3073 Email: Schnare.David@EPA.gov

REGISTRATION FEE/ PAYMENT INFORMATION

		Quantity	Amount
WWEMA Member - First Registrant	\$875	_____	_____
WWEMA Member - Additional Registrant	\$775	_____	_____
WWEMA Member - Young Professional/New Entrant	\$450	_____	_____
Non-member*	\$1,250	_____	_____

SPONSORSHIPS (please circle one)

	Quantity	Amount
Platinum (\$1,500) Gold (\$1,000) Silver (\$750) Bronze (\$500)	_____	_____

TOTAL AMOUNT DUE

COMP

PAYMENT

- ☐ Check enclosed (payable to WWEMA)
☐ Credit card (please circle one)

MasterCard

Visa

AmEx

Name on card: _____

Card number: _____

Expires: _____ Security ID #: _____

Billing Address for card: _____

CANCELLATION POLICY:

A full refund of all Washington Forum registration fees (less and \$85 processing fee) will be issued on all cancellations received by March 3. Thereafter, a 50% refund will be issued on cancellations received by March 15. No refund will be issued for cancellations made after March 15.

NON-MEMBER ATTENDANCE POLICY:

* Attendance at the Washington Forum is available to non-members one-time only. If you or someone from your company has attended the Washington Forum previously, you must join WWEMA to be eligible to register. For membership information, please call (703) 444-1777.



Send form with payment to:
WWEMA
540 Fort Evans Road, Suite 304
Leesburg, VA 20176-3379

Via email to: anita@wwema.org
Or register online at:
www.wwema.org/washingtonforum.php
Questions? Call (703) 444-1777

To: Schnare, David[schnare.david@epa.gov]
From: Smith, Loren (OST)
Sent: Mon 3/13/2017 4:59:48 PM
Subject: CAFE notice

Please email me the final Word doc version as well - it is part of the Federal Register submission process.

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: U.S. EPA Office of Media Relations
Sent: Tue 2/21/2017 11:25:05 AM
Subject: MEDIA ADVISORY: ****TODAY**** EPA Administrator Scott Pruitt to Deliver Remarks to EPA Employees

CONTACT:
pressrsvp@epa.gov

MEDIA ADVISORY
February 21, 2017

TODAY: EPA Administrator Scott Pruitt to Deliver Remarks to EPA Employees

WASHINGTON – U.S. EPA Administrator Scott Pruitt will address employees in the Green Room at EPA Headquarters at noon, today, Tuesday, February 21, 2017. Administrator Pruitt's remarks will be open to the press.

WHAT: EPA Administrator to deliver speech to EPA employees

WHO: Scott Pruitt, U.S. EPA Administrator

WHEN: **TODAY**, Noon EST Tuesday, February 21, 2017

WHERE: U.S. EPA Headquarters, 1200 Pennsylvania Ave. N.W. Washington, D.C. 20460

RSVP: Members of the media should email pressrsvp@epa.gov to attend in person or call in. Members of the media interested in listening to the speech should dial in 30 minutes prior to the noon starting time at the number below

Call-in Number: 877-887-8949

Conference ID: 75415728

****To join the call, all participants will be required to provide their first and last name, news outlet affiliation, and email address.**

For any television or radio logistics please call Ron Slotkin Director, of Office of Multimedia at: (202) 615-2811

**** Event is for credentialed members of the news media only ****

MEDIA RSVP: Please email: pressrsvp@epa.gov to confirm attendance. Doors will open at 10:00 a.m. to allow cameras time for set up. All members of the news media should allow extra time to enter the building and go through security, and bring a photo id credentials.

Directions: Taking METRO: Take the Blue and Orange Line to the Federal Triangle Station. Go to the top of the escalator and in the alcove, walk to the right to the North Building, through the double glass doors to security screening.

By Car: There is public parking in the garage of the Ronald Reagan Building next to EPA headquarters. Enter through the garage entrance on Pennsylvania Avenue.

R025

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking [here](#).
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

To: Flynn, Mike[Flynn.Mike@epa.gov]; Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]
From: Shapiro, Mike
Sent: Fri 3/10/2017 9:59:05 PM
Subject: American Iron and Steel Waiver Request
Akron OH Availability Waiver 2_13_17.docx
transmittal memo 2017 akron OH (FINAL).docx

All,

I want to make you aware of a Clean Water State Revolving Fund (CWSRF) American Iron and Steel waiver request that we are preparing to approve. For background, CWSRF assistance recipients must use specific domestic iron and steel products that are produced in the United States. However, we have the authority to waive this requirement based on certain circumstances set forth in Section 608(c) of the Clean Water Act.

The Akron, Ohio project in question is part of a 2014 Combined Sewer Overflow (CSO) consent decree and consists of installing 6,000 feet of 27-foot diameter storage tunnel. No domestic steel fiber reinforcement is able to meet the project's technical specifications. The City asserted, with supporting documentation and testing results, that the domestic fiber alternative would potentially compromise the structural integrity of the precast, segmental tunnel system. To date, this is the Agency's most extensively researched AIS waiver request. EPA staff verified that the material specification for the project is performance-based, visited the precast, segmental tunnel liner manufacturing facility (CSI-Hansen in Macedonia, OH) to independently verify the performance basis of the specifications, and conducted independent market research, in addition to conducting the required public notice comment period. We have been unable to find an AIS-compliant product that meets the project's technical specifications.

Please note that during public comment solicitation, EPA received significant comments from Helix Steel, a domestic manufacturer of steel fiber reinforcement. The attached draft waiver approval and internal memo address and respond to the Helix comments. The Governor's office in Ohio and Congressional Representatives in Ohio and Michigan were copied on Helix's comment submission.

I am recommending signature and approval of the waiver by Andrew Sawyers, Director of the Office of Wastewater Management (OWM). Please let me know if you have any

concerns or would like additional information.

Thanks,

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

DECISION MEMORANDUM

SUBJECT: Project Waiver of American Iron and Steel Requirements to the City of Akron, Ohio for Steel Fiber Reinforcement

FROM: Andrew D. Sawyers, Director
Office of Wastewater Management

The U.S. Environmental Protection Agency is hereby granting a project waiver pursuant to the “American Iron and Steel” requirements of the Clean Water Act Section 608 under the authority of Section 608(c)(2) to City of Akron for the purchase of non-domestic steel fiber reinforcement to be used in the production of precast segmental tunnel liners. This waiver permits the use of steel fiber reinforcement manufactured outside of the United States in City of Akron’s Ohio Canal Interceptor Tunnel project. This is a project specific waiver and only applies to the use of the specified product for the proposed project funded by the Clean Water State Revolving Fund. Any other project funded by either the Clean Water or Drinking Water State Revolving Fund that wishes to use the same product must apply for a separate waiver based on the specific project circumstances.

Rationale: According to Section 608 of the Clean Water Act, CWSRF assistance recipients must use specific domestic iron and steel products that are produced in the United States if the project is funded through the SRFs. The EPA has the authority to determine whether it is necessary to waive this requirement based on certain circumstances set forth in Section 608(c)(2) of the Clean Water Act. The provision states that, “[the requirements] shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency... finds that – (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.”

The City of Akron plans to use steel fiber reinforcement in the production of precast segmental tunnel liners as part of the Ohio Canal Interceptor Tunnel project. The project consists of installing a 27-foot diameter tunnel that will capture and store combined sewer overflows. The completed tunnel will provide 6,000 feet of tunnel storage at a depth of 150 feet. The project is being completed as part of a consent decree with the EPA and the U.S. Department of Justice in 2014.

The City of Akron applied for a project waiver from the AIS requirements for the use of a non-domestic brand of steel fiber reinforcement because no steel fiber reinforcement produced in the United States is able to meet the project’s technical specifications. The specifications define acceptable steel fibers as meeting three requirements:

1. Conforming to ASTM A820.
2. Fibers shall have hooked ends, a length of 2-3/8 inches and an aspect ratio of 80.
3. Do not use loose steel fibers that may cause balling during mixing.

The City was unable to find domestic steel fibers that can satisfy all three of the requirements above. The City claims that use of steel fiber reinforcement that does not meet the above requirements would necessitate changes to the project linear design, additional testing, major modifications to the manufacturing process of the segmental tunnel liners, and a redesign of the concrete mix. These changes would result in significant project delays and may compromise the structural integrity of the precast segmental tunnel liners.

In reviewing project waiver requests based on availability, the EPA conducts market research to search for an alternative domestic product that can meet the project requirements and technical specifications. Furthermore, the EPA examines the technical specifications for the product to determine if they are performance-based specifications, rather than narrow specifications that give preference to a particular brand. The EPA conducted market research for this request and was unable to find an AIS-compliant product that could meet the project's technical specifications. The EPA also verified that the material specification above is a performance-based specification. The material properties of the steel fiber reinforcement including the fiber type (hooked end vs straight), aspect ratio and length all may affect the performance of steel fiber reinforced concrete. In addition, longer steel fibers such as the ones specified may improve toughness characteristics of the concrete, but may cause problems during the mixing and lead to balling within the concrete mix.¹ The requirement to "not use loose steel fibers" is critical to ensure a uniform distribution of steel fibers in the concrete. The EPA also visited the applicant's precast segmental tunnel liner manufacturing facility to independently verify the performance basis of the applicant's specifications.

The EPA solicited public comments on this waiver request and received comments from a domestic manufacturer of steel fiber reinforcement. The comments claimed that the material specification requiring hooked end steel fibers, with a specific length and aspect ratio are not performance based and intended to allow the applicant to purchase the product from a single source. However, the EPA verified from an independent source that the hooked end characteristic, length and aspect ratio affect the performance of steel fiber reinforced concrete. The comments also claimed that the requirement to not use loose fibers should be disregarded since loose fibers have been used in other precast segmental tunnel lining projects. While loose steel fibers may have been appropriate for use in other projects, the design of the precast segments and material specifications for the City of Akron was based on site specific conditions and project requirements. The specification to not use loose steel fibers to avoid balling during mixing is a valid, performance-based specification and should not be disregarded.

Since the applicant established a proper basis to specify a particular product required for the project and the EPA substantiated the applicant's claim that a product that can meet the technical specifications is not available from a domestic source, the EPA is hereby granting a waiver from the AIS requirements to the City of Akron. This waiver permits the purchase of the specified non-

¹ King, M.R. The Design and Use of Steel Fiber Reinforced Concrete Segments, Proceedings of Rapid Excavation and Tunneling Conference, Seattle, June 27-29, 2005.

domestic steel fiber reinforcement documented in the state of Ohio's waiver request submittal on behalf of the applicant dated January 10, 2017.

Previously, the EPA did not approve a project waiver request for steel fiber reinforcement for the Northeast Ohio Regional Sewer District that had a similar material specification for steel fibers. In this case, the City of Akron was able to provide sufficient justification that the material specifications for the steel fibers were performance-based. This justification was lacking from the previous waiver request.

If you have any questions concerning the contents of this memorandum, please contact Timothy Connor, Chemical Engineer, Municipal Support Division, at connor.timothy@epa.gov or (202) 566-1059.

MEMORANDUM

SUBJECT: Background Regarding “Project Waiver of American Iron and Steel Requirements to the City of Akron, Ohio for Steel Fiber Reinforcement”

FROM: Raffael Stein, Director
Water Infrastructure Division

TO: Andrew D. Sawyers, Director
Office of Wastewater Management

The attached, proposed Decision Memorandum is a project availability waiver to the City of Akron, Ohio that will allow for the purchase of non-domestic steel fiber reinforcement to be used in the production of precast, segmental tunnel liners (manufactured by CSI-Hansen). The project is part of a 2014 Combined Sewer Overflow (CSO) consent decree and consists of installing 6,000 feet of 27-foot diameter storage tunnel.

The City of Akron applied for an availability waiver instead of a public interest waiver, because no steel fiber reinforcement produced in the United States is able to meet all three of the project’s technical specifications for steel fiber: 1) Conforming to ASTM A820; 2) Fibers having hooked ends, a length of 2-3/8 inches and an aspect ratio of 80; and 3) Do not use loose steel fibers that may cause balling during mixing.

EPA staff verified that the material specification for the project is performance-based and visited the precast segmental tunnel liner manufacturing facility (CSI-Hansen in Macedonia, OH) to independently verify the performance basis of the specifications. The City claims that the use of steel fiber reinforcement that does not meet the above three requirements would necessitate changes to the project linear design, additional testing, major modifications to the manufacturing process of the segmental tunnel liners, and a redesign of the concrete mix. These changes would result in significant project delays and could compromise the structural integrity of the precast segmental tunnel liners.

In addition, EPA staff and contractors conducted market research for this request and were unable to find an AIS-compliant product that could meet the project’s technical specifications. The material properties of the steel fiber reinforcement including the fiber type (hooked end vs. straight), aspect ratio and length all affect the performance of steel fiber reinforced concrete, according to project design engineers and technical literature. In addition, longer steel fibers such as the ones specified may improve toughness characteristics of the concrete, but may cause problems during the mixing and lead to balling within the concrete mix. According to the design engineers and the segment manufacturers, the requirement to “not use loose steel fibers” is critical to ensure a uniform distribution of steel fibers in the concrete.

During public comment solicitation, EPA received comments from Helix Steel, a domestic

manufacturer of steel fiber reinforcement. The Governor's office in Ohio and Congressional Representatives in Ohio and Michigan were copied on the comment submission. A summary of Helix's claims and our countervailing considerations are as follows:

- 1) Helix claims that the length and aspect ratio requirement is not performance-based and should be disregarded. It claims that loose fibers from a manufacturer other than Helix have been used on precast segmental tunnels. Helix did not provide any evidence to support these claims and they did not provide any evidence that Helix's fibers have been successfully used in precast segmental tunnel lining projects.
- 2) Helix claims that its fibers meet each of the listed project design requirements including dosage, washout and strength testing requirements. Helix provided third-party testing results as well as results from Akron's contractor, CSI-Hanson, to support this statement (Akron also provided the strength test results from CSI-Hanson with this waiver request). CSI-Hanson performed two sets of strength tests using Helix steel fibers, in June and October of 2015. In June, two of the three beams failed the flexural strength test. In October, all three beams met the minimum criteria for flexural strength. Helix only included the results from the October testing in its comments.
- 3) Helix claims that the technical specification's prohibition on loose fibers should be disregarded, since loose fibers have been used in other precast segmental tunnel lining projects. While loose steel fibers may have been appropriate for use in other projects, according to project design engineers and the segment manufacturers, the design of the precast segments and material specifications for the City of Akron is based on site-specific conditions and project requirements. The specification's prohibition on loose fibers to avoid balling during mixing is a valid, performance-based specification and should not be disregarded.

Previously, the EPA did not approve a project waiver request for steel fiber reinforcement for the Northeast Ohio Regional Sewer District, which had similar material specifications for steel fibers. However, the Northeast Ohio Regional Sewer District was unable to provide the EPA with any justification that the hooked end characteristic and geometry of the steel fibers affect the performance of concrete in the precast segmental tunnel liners. In this case, the City of Akron was able to provide peer-reviewed technical literature asserting that the material specifications including the hooked end characteristic and fiber geometry were performance-based.

Since the applicant established a proper basis to specify a particular product required for the project (a performance-based specification) and the EPA substantiated the applicant's claim that a product that can meet the technical specifications is not available from a domestic source, we are recommending signature and approval of the attached waiver request Decision Memorandum for the City of Akron to purchase the specified non-domestic steel fiber reinforcement.

The Office of General Counsel has concurred with this draft waiver determination.

If you have questions concerning the contents of this memorandum, please contact Timothy Connor, Chemical Engineer, Water Infrastructure Division, at connor.timothy@epa.gov or (202) 566-1059.

/attachment

To: Schnare, David[schnare.david@epa.gov]
From: Jackson, Ryan
Sent: Wed 3/15/2017 12:24:51 AM
Subject: Re: Meeting with the Corps

I agree. I will be out much of tomorrow. Let's get together with Byron and Justin on the EO. the actions have to be teed up.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

> On Mar 14, 2017, at 8:08 PM, Schnare, David <schnare.david@epa.gov> wrote:

>

> Mike Shapiro asked me to come to the meeting with the Corps to discuss WOTUS. The only way to meet the Administrator's deadlines is to get the Corps on board immediately. Shapiro believes he needs political clout to get them moving. I will explain the President's interest in getting this done and the Administrator's commitment to do so in a timely manner.

>

> After that I'm meeting with folks who have already met with Ryan. I don't know why they want to meet with me, having already met with Ryan, but it is an old colleague so I'll give him some time.

>

> Ryan, we should spend a few minutes discussing response to the energy EO. Unless you intend to rely heavily on the career staff, we will need to use people you trust.

>

> d

>

> Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: Schwab, Justin
Sent: Tue 3/7/2017 2:14:47 PM
Subject: (DOJ's view) FW: Pebble

David,

In re: Pebble,

See below; DOJ (Civil Division, not ENRD) takes the view **Deliberative Process Privilege/Ex. 5**

Attorney Client/Attorney Work product/Deliberative Process Privilege/Ex. 5

Best,

Justin

From: Wood, Jeffrey (ENRD) [mailto:Jeffrey.Wood@usdoj.gov]
Sent: Tuesday, March 7, 2017 9:13 AM
To: Schwab, Justin <schwab.justin@epa.gov>
Subject: Pebble

Justin,

Per our call yesterday, here are some bullet points that the Civil Division at DOJ put together as background info on Pebble. Note that the case is stayed until March 20.

AC DP/Ex. 5

AC DP/Ex. 5

To discuss further, you should reach out to:

Alex Haas

U.S. Department of Justice

Chief of Staff, Civil Division

(202) 353-8679

alex.haas@usdoj.gov

AC DP/Ex. 5

Thanks,

Jeff

To: Schnare, David[schnare.david@epa.gov]
From: Dunham, Sarah
Sent: Wed 3/1/2017 6:07:04 PM
Subject: timeline
[Timeline for Mailing ICR letters.docx](#)

I've attached the timeline developed for sending out the letters. We pushed pretty hard, and staff felt pretty strongly that they didn't want to promise less than two weeks—given it took them more than a month the first time, and we still need to task a contractor (not yet been done). They are proceeding to draft the letter, and get a contractor lined up, so they will try for faster. [yes, it is likely possible it could be done faster for a lot more money using a print shop]

To: Schnare, David[schnare.david@epa.gov]
Cc: Reeder, John[Reeder.John@epa.gov]
From: Grantham, Nancy
Sent: Thur 3/9/2017 4:55:39 PM
Subject: RE: ryan said he told you we are okay to sign the cafe FR today --

Will do

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Schnare, David
Sent: Thursday, March 09, 2017 11:54 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Reeder, John <Reeder.John@epa.gov>
Subject: Re: ryan said he told you we are okay to sign the cafe FR today --

Do it

Sent from my iPhone

On Mar 9, 2017, at 11:52 AM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:

<image001.gif>

If we get it to john reeder, he will get is autopenned and then we can figure out who will take to DOT.

Thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Flynn, Mike
Location: WJC-N 3415
Importance: Normal
Subject: Hot Issues Check-in
Start Date/Time: Wed 3/8/2017 8:30:00 PM
End Date/Time: Wed 3/8/2017 9:00:00 PM

To: Schnare, David[schnare.david@epa.gov]
From: Brooks, Phillip
Sent: Mon 3/6/2017 1:47:45 PM
Subject: Re: We might need to look into the VW settlement fund

I am not aware of any EPA position on this. The company chose not to seek new certifications for certain lines of vehicles. Other manufacturers have continued to sell diesel passenger vehicles in the United States. If VW were to seek and obtain certifications, they too could sell new diesel passenger vehicles in the United States.

Sent from my iPhone

On Mar 6, 2017, at 7:52 AM, Schnare, David <schnare.david@epa.gov> wrote:

Phil
What is the answer?

dschnare

Sent from my iPhone

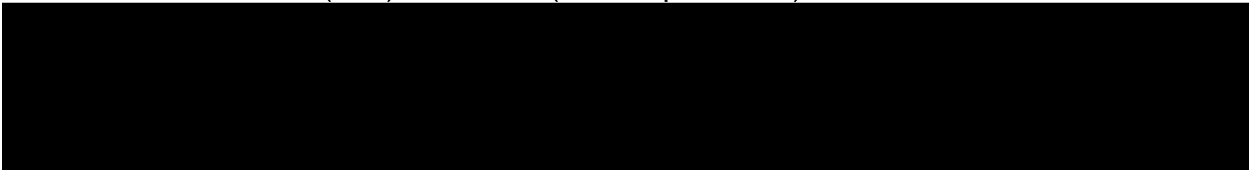
On Mar 5, 2017, at 10:24 PM, McCown, Brigham (OST) <brigham.mccown@dot.gov> wrote:

David, does EPA have a position on VW/Audi re-introducing diesel vehicles back into the market?

Best,

Brigham

B. A. McCown
Consultant - Advisor to the Secretary
U.S. Department of Transportation
Office of the Secretary
West Building W92-319
1200 New Jersey Ave, S.E.
Washington, DC 20590
(202) 366-9315 (office)
(202) 997-5407 (mobile preferred)



[REDACTED]

Folks,

Attached are some talking points on the VW settlement that you may find helpful.

Important take aways from the VW deal – the \$2.7 Billion is German money being spent in the U.S.

Had our President been in office when the deal was done, we would have put a buy American element in it. It wasn't on the radar then so isn't in it now.

But, we are just starting a new case against Fiat that is nearly as large and we can put that kind of thing in there. If you have specific ideas you'd like out folks to consider, send them to me.

David Schnare

From: Smith, Loren (OST) [<mailto:Loren.Smith@dot.gov>]
Sent: Friday, March 3, 2017 11:19 AM
To: Schnare, David <schnare.david@epa.gov>; Fulton, Finch (OST) <Finch.Fulton@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; McCown, Brigham (OST) <brigham.mccown@dot.gov>
Subject: We might need to look into the VW settlement fund

Dave, copying my Senior WH Advisor as well as Finch and Brig.

Sent from my iPhone

Begin forwarded message:

Date: March 3, 2017 at 10:26:20 AM EST
To: "Smith, Loren (OST)" <Loren.Smith@dot.gov>
Subject: Volkswagen Clean Air Act Civil Settlement | Enforcement | US EPA

Loren - do you have a contact on the US EPA landing team?

The recent VW settlement created a \$2.7B (yes, that's BILLION) mitigation trust fund to offset the impact of VW's actions.

As the EPA's press release (<https://www.epa.gov/enforcement/volkswagen-clean-air-act-civil-settlement>) states, "Eligible mitigation actions include projects to reduce NOx from heavy duty diesel sources near population centers, such as large trucks that make deliveries and service ports, school and transit buses, and freight switching railroad locomotives. Thus, for example, eligible mitigation actions could include replacing or repowering older engines for newer engines at a rail switchyard, or could include replacing older city transit buses with new electric-powered transit city buses. Eligible mitigation actions may also include, in a more limited capacity, charging infrastructure for light duty zero emission passenger vehicles."

FHWA has issued Buy America waivers to enable CMAQ recipients to buy school buses that don't comply with Buy America requirements (e.g., <https://www.fhwa.dot.gov/construction/contracts/cmaq.cfm> and <https://www.fhwa.dot.gov/construction/contracts/cmaq160517.cfm>). However, because transit buses have pretty much been the domestic domain of FTA and we have invested significant resources into technical assistance and oversight programs to ensure that transit vehicles and their manufacturers comply with Federal requirements (ADA compliance, DBE compliance, Altoona testing compliance, and Buy America compliance), we persuaded FHWA to flex its CMAQ grant applications to FTA for administration (see <https://www.fhwa.dot.gov/construction/contracts/131211.cfm>).

It would be consistent with the President's Build American policy to have transit vehicles acquired with VW Settlement funds comply with FTA's Buy America (and other) requirements - to wit, a Canadian bus manufacturer has been informing potential buyers of this funding source - <http://www.greenpowerbus.com/greenpower-buses-eligible-for-vw-settlement-funds/> and it further the Administration's interests to ensure that vehicles bought with the settlement funds were American-made (recalling that the previous Administration imposed no Buy American requirement when it initiated the "Clash for Clunkers" program in 2009, much to the chagrin of the Big Three and the UAW - see <http://mail.ofii.org/news/absence-buy-american-provision-cash-clunkers>).

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]
Cc: Konkus, John[konkus.john@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]
From: Hull, George
Sent: Tue 3/14/2017 11:35:32 PM
Subject: RE: Can you confirm authenticity? [WARNING: DKIM validation failed]

Agreed. Thanks, George

From: Jackson, Ryan
Sent: Tuesday, March 14, 2017 7:35 PM
To: Schnare, David <schnare.david@epa.gov>; Hull, George <Hull.George@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>
Subject: RE: Can you confirm authenticity? [WARNING: DKIM validation failed]

I would provide no response. This is a temporary thing at the beginning of an administration to ensure we are on top of what's happening at the agency. I'm not at all concerned about responding to Bloomberg News. Thanks.

From: Schnare, David
Sent: Tuesday, March 14, 2017 7:15 PM
To: Hull, George <Hull.George@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>
Subject: Re: Can you confirm authenticity? [WARNING: DKIM validation failed]

I was directed to send this out by the Administrator. The Chief of Staff reviewed, edited and approved the language before it was sent. It was indeed exactly as represented below.

David

Sent from my iPhone

On Mar 14, 2017, at 7:07 PM, Hull, George <Hull.George@epa.gov> wrote:

David,

I wanted to make you aware that we have received an inquiry from a BNA reporter regarding an e-mail from you regarding the Administrator's approval authority. We have not responded. The reporter is asking "what the memo actually covered." I think he is calling your e-mail a memo. Since he appears to have a copy of your e-mail, it doesn't look like there would be more to say. I'm not pushing for us to respond. Let me know if you feel otherwise. - George

From: Valentine, Julia
Sent: Tuesday, March 14, 2017 6:51 PM
To: Hull, George <Hull.George@epa.gov>
Subject: Fwd: Can you confirm authenticity? [WARNING: DKIM validation failed]

Julia P. Valentine

Office of Media Relations

202.564.2663

Sent from USEPA iPhone

Begin forwarded message:

From: "Dabbs, Brian" <bdabbs@bna.com>
Date: March 14, 2017 at 5:57:41 PM EDT
To: "Valentine, Julia" <Valentine.Julia@epa.gov>, "Daguillard, Robert" <Daguillard.Robert@epa.gov>
Subject: RE: Can you confirm authenticity? [WARNING: DKIM validation failed]

I'm going to hold off publishing this until the morning. If you can please tell me what the memo actually covers? All delegated authorities such as approvals of state water quality standards and some Superfund remedies?

From: Dabbs, Brian
Sent: Tuesday, March 14, 2017 4:00 PM
To: Valentine, Julia <Valentine.Julia@epa.gov>; 'Daguillard, Robert' <Daguillard.Robert@epa.gov>
Subject: Can you confirm authenticity?

Hi. Can you confirm the authenticity of this memo?

From: Schnare, David

Sent: Thursday, March 02, 2017 9:14 AM

To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>

Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>

Subject: Delegation of authority

Because the Presidentially-appointed Assistant Administrators and Regional Administrators have yet to assume their duties, for the next 30 days, the Administrator wishes to retain approval authority for Agency actions having significant regulatory and enforcement effect. The Administrator will rely on the Acting RA's and AA's to identify and send upward any proposed decisions or final agency actions for the Administrator's review which, in the judgement of the Acting RA's and AA's would limit the flexibility of the States, limit energy resource use, impose significant costs on industry or commerce, or otherwise likely result in significant public attention on the proposed decisions or final agency actions.

If so, why is this necessary in light of standard protocol to channel significant actions through the office of the administrator, as well as the ongoing regulatory freeze?

My deadline is 430. Thanks.

Brian Dabbs

Reporter

Bloomberg BNA

Direct: 7033413746

Mobile: 4103532509

bdabbs@bna.com

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Kime, Robin[Kime.Robin@epa.gov]
From: Rees, Sarah
Sent: Tue 3/7/2017 2:08:28 PM
Subject: Re:

Absolutely - will do.

On Mar 7, 2017, at 8:47 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Sarah,

There are several items that were approved last Friday that I neglected to notify you about. The time-limited tolerances for Flupyradifurone, Streptomycin, and Oxytetracycline are approved.

Would you mind updating the FR Queue list to reflect this, and where there are cells that do not indicate what the deadline is, is there any way you could have someone update those?

Many thanks for all your work, Sarah.

Samantha

To: Schnare, David[schnare.david@epa.gov]
From: DWSschnare
Sent: Mon 3/13/2017 11:40:13 PM
Subject: Fwd: Trump: Government Reorganization EO Today...opportunity to comment!
Executive Order for Comprehensive Reorganization--03-13-17.docx

Sent from my iPad

Begin forwarded message:

From: Randy Randol Comcast <randy.randol@comcast.net>
Date: March 13, 2017 at 4:58:11 PM EDT
To: Undisclosed-recipients: <>;
Cc: Undisclosed-recipients: <>;
Subject: **Trump: Government Reorganization EO Today...opportunity to comment!**

At 4:30pm eastern time today, immediately following the President's first Cabinet meeting, we expect the President to sign a government reorganization and modernization executive order—expected final text attached and a summary below.

Summary: This Executive Order requires the Director of OMB—with input from each agency—to submit to the President a comprehensive plan for reorganizing executive branch departments and agencies. This plan would include recommendations for eliminating or merging unnecessary agencies or functions. The OMB's final plan would include recommended legislation that could then be reported to Congress for potential consideration.

Under the EO, federal agencies would have 180 days to submit reviews and plans to the Director of OMB. OMB would then open a public comment period seeking suggestions to improve efficiencies. 180 days after the public comment period is closed, OMB would send a report and legislative recommendations to the President.

Congress will need to pass legislation to make the biggest changes to departments and agencies. But this Executive Order will begin the work of creating a leaner, more effective, more accountable government.

EXECUTIVE ORDER

- - - - -

COMPREHENSIVE PLAN FOR REORGANIZING THE EXECUTIVE BRANCH

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. This order is intended to improve the efficiency, effectiveness, and accountability of the executive branch by directing the Director of the Office of Management and Budget (Director) to propose a plan to reorganize governmental functions and eliminate unnecessary agencies (as defined in section 551(1) of title 5, United States Code), components of agencies, and agency programs.

Sec. 2. Proposed Plan to Improve the Efficiency, Effectiveness, and Accountability of Federal Agencies, Including, as Appropriate, to Eliminate or Reorganize Unnecessary or Redundant Federal Agencies. (a) Within 180 days of the date of this order, the head of each agency shall submit to the Director a proposed plan to reorganize the agency, if appropriate, in order to improve the efficiency, effectiveness, and accountability of that agency.

(b) The Director shall publish a notice in the *Federal Register* inviting the public to suggest improvements in the organization and functioning of the executive branch and shall consider the suggestions when formulating the proposed plan described in subsection (c) of this section.

(c) Within 180 days after the closing date for the submission of suggestions pursuant to subsection (b) of this section, the Director shall submit to the President a proposed plan to reorganize the executive branch in order to improve the efficiency, effectiveness, and accountability of agencies. The proposed plan shall include, as appropriate, recommendations to eliminate unnecessary agencies, components of agencies, and

agency programs, and to merge functions. The proposed plan shall include recommendations for any legislation or administrative measures necessary to achieve the proposed reorganization.

(d) In developing the proposed plan described in subsection (c) of this section, the Director shall consider, in addition to any other relevant factors:

(i) whether some or all of the functions of an agency, a component, or a program are appropriate for the Federal Government or would be better left to State or local governments or to the private sector through free enterprise;

(ii) whether some or all of the functions of an agency, a component, or a program are redundant, including with those of another agency, component, or program;

(iii) whether certain administrative capabilities necessary for operating an agency, a component, or a program are redundant with those of another agency, component, or program;

(iv) whether the costs of continuing to operate an agency, a component, or a program are justified by the public benefits it provides; and

(v) the costs of shutting down or merging agencies, components, or programs, including the costs of addressing the equities of affected agency staff.

(e) In developing the proposed plan described in subsection (c) of this section, the Director shall consult with the head of each agency and, consistent with applicable law, with persons or entities outside the Federal Government with relevant expertise in organizational structure and management.

Sec. 3. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,

February 8, 2017.

To: Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Dravis, Samantha
Sent: Fri 3/10/2017 9:54:50 PM
Subject: RE:

We can't track down her cell phone number. I've called the office several times.

Let me see if Scott Pruitt has a better number.

From: Schnare, David
Sent: Friday, March 10, 2017 4:54 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE:

Sam, if the dentist said he was aware of and ok with the rule, we probably need to get the matter over to OFR.

d.

From: Jackson, Ryan
Sent: Thursday, March 9, 2017 9:24 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE:

I believe she did the homework on this. Attached is some background which I thought would be helpful.

From: Schnare, David
Sent: Thursday, March 9, 2017 9:20 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>

Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Re:

I don't know what Sam has found out so it hasn't been greenlighted yet.

Sent from my iPhone

On Mar 9, 2017, at 9:17 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Did we officially give the green light to the dental regulation so we can get that out the door?

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

Personal Phone/Ex. 6

To: Schnare, David[schnare.david@epa.gov]
Cc: Anita Bermudez[anita@WWEMA.org]
From: Vanessa Leiby
Sent: Mon 3/6/2017 4:21:24 PM
Subject: Speaker Materials Request - WWEMA Washington Forum, March 22, 2017
2017 WF - (Speaker) Registration Form.pdf
2017 WF Preliminary Agenda as of 2-27-17 VL REVISIONS.pdf

Good morning Dave. I suspect you have been extremely busy with the new administrator, budget issues, and getting the EPA house in order. As we are approaching the Washington Forum, would you have a moment to review the speaker request below and to complete and send me the attached speaker form. Please let me know if I can provide any further assistance. We are looking forward to hearing from you. Vanessa

1) Meeting Location and Time:

March 22, 2017

9:00 – 9:30 a.m.

The Westin Georgetown

2350 M Street, NW

Washington, DC 20037

2) Please complete the attached speaker registration form and return it to me by 3/1/17 at vanessa@wwema.org

3) Please submit a headshot and one paragraph bio that we can use for the program by 3/1/17 to vanessa@wwema.org

4) Please let me know if you would like me to make any edits to your presentation description in the program by 3/1/17.

5) If you plan to use a PowerPoint presentation, please submit an electronic copy to vanessa@wwema.org by 3/15/17.

Thanks again and I look forward to working with you and the new Administration! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: 240-678-4623

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

From: Vanessa Leiby

Sent: Tuesday, February 14, 2017 10:48 AM

To: 'schnare.david@epa.gov'

Cc: Anita Bermudez

Subject: Confirmation to Speak at WWEMA Washington Forum, March 22, 2017

Importance: High

Hi Dave – it was great to hear your voice and briefly catch up this morning! I am very pleased that you will be able to speak at our 44th WWEMA Washington Forum on Wednesday, March 22. Please see the attached Preliminary Agenda for information about the timing of your presentation and other meeting and hotel logistics. I have not yet formally assigned timeslots but the session will run from 9:00 – 10:30 a.m. I would be honored if you would be able to open our meeting. Please see logistics and additional information requests, below:

1) Meeting Location and Time:

March 22, 2017

9:00 – 9:30 a.m.

The Westin Georgetown

2350 M Street, NW

Washington, DC 20037

- 2) Please complete the attached speaker registration form and return it to me by 3/1/17 at vanessa@wwema.org
- 3) Please submit a headshot and one paragraph bio that we can use for the program by 3/1/17 to vanessa@wwema.org
- 4) Please let me know if you would like me to make any edits to your presentation description in the program by 3/1/17.
- 5) If you plan to use a PowerPoint presentation, please submit an electronic copy to vanessa@wwema.org by 3/15/17.

Thanks again and I look forward to working with you and the new Administration! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: 240-678-4623

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

WWEMA 44th WASHINGTON FORUM - SPEAKER REGISTRATION

REGISTRATION (NOTE: Online registration is available at www.wwema.org/washingtonforum.php)

CONTACT INFORMATION (Please make copies of this form for additional registrants.)

Full Name: _____ First Name (for badge) _____
Title: _____
Company: _____
Street Address: _____
City: _____ State: _____ Zip Code: _____
Phone: _____ Email: _____

REGISTRATION FEE/ PAYMENT INFORMATION

		Quantity	Amount
WWEMA Member - First Registrant	\$875	_____	_____
WWEMA Member - Additional Registrant	\$775	_____	_____
WWEMA Member - Young Professional/New Entrant	\$450	_____	_____
Non-member*	\$1,250	_____	_____

SPONSORSHIPS (please circle one)

Platinum (\$1,500)	Gold (\$1,000)	Silver (\$750)	Bronze (\$500)	Quantity	Amount
				_____	_____

TOTAL AMOUNT DUE

COMP

PAYMENT

* * * **Check enclosed** (payable to WWEMA)

* * * **Credit card** (please circle one)

MasterCard

Visa

AmEx

Name on card: _____

Card number: _____

Expires: _____ Security ID #: _____

Billing Address for card: _____

CANCELLATION POLICY:

A full refund of all Washington Forum registration fees (less and \$85 processing fee) will be issued on all cancellations received by March 3. Thereafter, a 50% refund will be issued on cancellations received by March 15. No refund will be issued for cancellations made after March 15.

NON-MEMBER ATTENDANCE POLICY:

** Attendance at the Washington Forum is available to non -members one-time only. If you or someone from your company has attended the Washington Forum previously, you must join WWEMA to be eligible to register. For membership information, please call (703) 444-1777.*



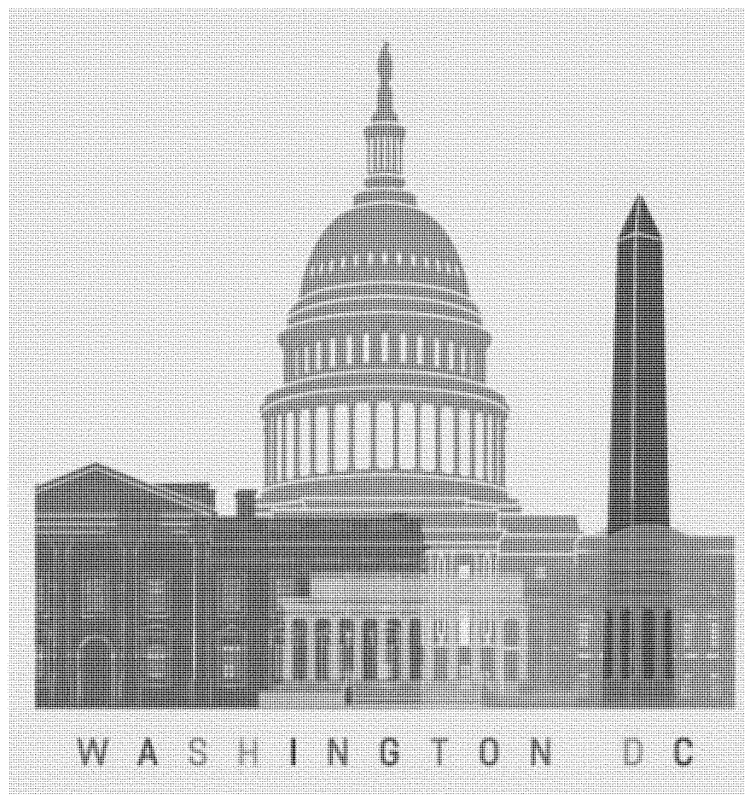
Send form with payment to:
WWEMA
540 Fort Evans Road, Suite 304
Leesburg, VA 20176-3379

Via email to: anita@wwema.org
Or register online at:
www.wwema.org/washingtonforum.php
Questions? Call (703) 444-1777

WWEMA 44TH WASHINGTON FORUM

Understanding the New Reality Making Sense Out of Change

**MARCH 21-23, 2017
THE WESTIN GEORGETOWN
WASHINGTON, DC**



WATER WEEK 2017

Preliminary Agenda

ED_001612_00028981-00001

SCHEDULE OF EVENTS

TUESDAY, MARCH 21

11:00 a.m. - 5:00 p.m.

Registration

9:30 - 11:30 a.m.

Executive Committee Meeting

12:00 noon - 1:00 p.m.

Lunch on own

1:00 - 3:00 p.m.

Membership & Marketing Committee Meeting (All Members)

3:00 - 5:00 p.m.

Legislative/Regulatory Committee Meeting (All Members)

5:30 - 7:00 p.m.

Welcome Reception

WEDNESDAY, MARCH 22

7:00 a.m. - 5:00 p.m.

Registration

8:00 - 8:30 a.m.

Continental Breakfast

8:30 a.m. - 12:00 noon

General Session

12:00 noon - 1:30 p.m.

Networking Lunch

1:30 - 4:30 p.m. *

General Session

4:30 - 6:30 p.m.

Congressional Reception

(Capitol Hill with other water associations)

*3:00 - 4:30 p.m..

Joint Officers Meeting (Marriott)

THURSDAY, MARCH 23

7:30 a.m. - 12:00 noon

Registration

8:00 - 8:30 a.m.

Continental Breakfast

8:30 a.m. - 11:30 a.m.

General Session

11:30 a.m.

Meeting Adjourns

12:00 noon - 3:00 p.m.

Board Lunch and Meeting

Preliminary Agenda

WWEMA 44TH WASHINGTON FORUM

Join the Water and Wastewater Equipment Manufacturers Association (WWEMA) for our 44th Washington Forum, March 21-23, 2017. This is the "Must Attend" event of the year if you want to know the direction of the new Administration and what it means for your business. The first few weeks of the Trump Administration have been dominated by Presidential Memoranda and Executive Orders affecting the political, regulatory, environmental, and trade landscapes. How will these changes impact your customers and your company's bottom line? This year's theme is appropriately titled *Understanding the New Reality – Making Sense Out of Change*. Join with us and the other major water associations as we celebrate Water Week 2017 and take this opportunity to highlight the value of water and water infrastructure.

Wednesday, March 22

* 8:00 - 8:30 a.m. *

Continental Breakfast

* 8:30 - 9:00 a.m. *

Welcome and Announcements

John Dyson, Aqua-Aerobic Systems, Washington Forum Chair

* 9:00 - 10:30 a.m. *

What Might the Political, Regulatory, Environmental, and Trade Landscapes Look Like Under the New Administration?

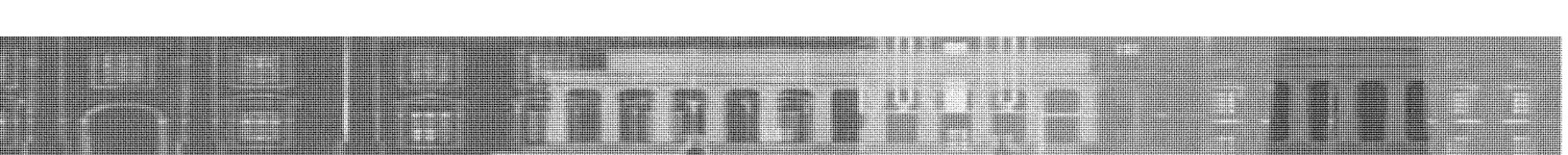
With a new Administration comes change and this has been clearly evident in the first few weeks of 2017. While the transition phase continues and Cabinet nominations and senior agency appointments go through the approval process, the day-to-day business of running our country continues. Of particular interest are the changes that may impact the regulatory, environmental, and trade landscapes that will have direct and indirect impacts on U.S. businesses. WWEMA has invited several key senior leaders to share and engage with WWEMA members on the changes that have been set in motion and what they might mean for the future.

David Schnare, Ph.D., J.D., Assistant Deputy Administrator, Office of EPA Administrator

Change is definitely in the future for the EPA. Dr. David Schnare, a member of the President's Transition Team to EPA, and currently Assistant Deputy Administrator will share the Administration's new vision for EPA, water infrastructure investment, and the role of manufacturing and technology in ensuring public health and environmental protection.

Vanessa M. Leiby, Executive Director, Water and Wastewater Equipment Manufacturers Association

WWEMA has been actively engaged with the U.S. Department of Commerce for many decades, supporting and promoting the reduction or elimination of tariffs and non-tariff trade barriers that hinder the ability of U.S. manufacturers to export products overseas. Recent Presidential Executive Orders and Memoranda have made it clear that the new Administration will look closely at trade negotiations and commitments. Two recent memoranda were referred to the Secretary of Commerce - the construction of U.S. pipelines with a requirement to submit a plan for implementation; and streamlining permitting and reducing



regulatory burdens for domestic manufacturing that includes outreach to stakeholders. Leiby will discuss the current landscape and opportunities where WWEMA might engage once Department of Commerce leadership has been confirmed.

Carolina Mederos, Principal, Squire Patton Boggs LLP

We are all aware that the new Administration ran on a platform of “Buy American, Hire American” – but what does that really mean? Currently, there exists complex and confusing requirements at the Federal level across transportation, water, and other infrastructure related to “Buy America”, “Buy American”, “American Iron and Steel” and others. Navigating the existing requirements has become increasingly challenging at the Federal level – not to mention the additional regulations in place in many states. New Presidential Executive Orders and Memoranda, Congressional legislation, state initiatives, and trade discussions have further complicated the discussion. Ms. Mederos, an expert on this topic, will provide an overview of current legislation and regulations and discuss recent new directions with the purpose of helping manufacturers better understand the current and potentially changing landscape to determine how best to position your companies for success.

*** 10:30 - 11:00 a.m. ***

Networking Break

*** 11:00 a.m. - 12:00 noon ***

**Construction Faces New Opportunities, New Uncertainties
*Ken Simonson, Chief Economist, Associated General Contractors***

Contractors have expressed greater optimism about the outlook for construction than in any year since the recession. Potentially higher economic growth, homebuilding, and infrastructure spending could boost water and wastewater construction along with other markets, and contractors are hoping for regulatory and tax relief. But the range of possible policy outcomes has also expanded—including higher costs, lower labor availability, and slower growth. AGC's Chief Economist will describe the possibilities, the threats, and his forecast.

*** 12:00 noon - 1:30 p.m. ***

Networking Lunch

*** 1:30 - 2:30 p.m. ***

What's Next for the U.S. Environmental Protection Agency, Office of Water? (Panel Discussion)

This is an incredible time of transition for the U.S. Environmental Protection Agency. While it awaits confirmation of a new administrator, President Trump has already signed an Executive Order on reducing regulation and controlling regulatory costs and a Presidential Memorandum streamlining permitting and reducing regulatory burdens for domes-

tic manufacturing. Join WWEMA as we hear from the current leaders of the Office of Water to learn more about the impacts of the new Administration on the regulatory framework and the priorities of the Office of Water.

Peter Grevatt, Ph.D., Director, EPA Office of Ground Water and Drinking Water

The Office of Ground Water and Drinking Water (OGWDW), together with states, tribes, and its many partners, protects public health by ensuring safe drinking water and protecting ground water. It oversees implementation of the Safe Drinking Water Act. OGWDW develops and helps implement national drinking water standards; oversees and assists in funding of state drinking water programs and source water protection programs; helps small drinking water systems; protects underground sources of drinking water through the Underground Injection Control Program; and provides information about drinking water quality to the public.

Andrew Sawyers, Ph.D., Director, EPA Office of Wastewater Management

The Office of Wastewater Management (OWM) supports the Clean Water Act by promoting effective and responsible water use, wastewater treatment, disposal, and management and by encouraging the protection and restoration of watersheds. OWM provides regulatory standards, voluntary management approaches, and financial and technical assistance to states, tribes, communities, and regulated entities to protect human health and aquatic ecosystems, reduce flooding, and protect the nation's infrastructure investment.

Betsy Southerland, Ph.D., Director, EPA Office of Science and Technology

The Office of Science and Technology (OST) works with states, tribes, and other stakeholders to develop recommended safe water quality levels for toxics, nutrients, and pathogens to help ensure our nation's waters can be used for fishing, swimming, and drinking water. OST also develops national economically and technologically achievable performance standards to address water pollution from industry.

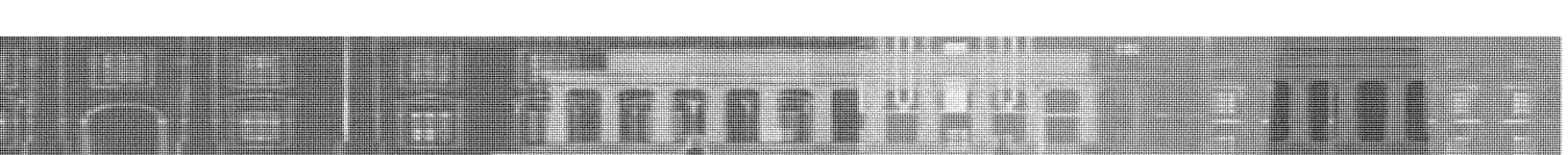
*** 2:30 - 2:45 p.m. ***

Break

*** 2:45 - 3:30 p.m. ***

Regulatory Implementation and Infrastructure Financing – What Can We Learn from the States and State Financing Authorities? (Panel Discussion)

The new Administration has promised to reduce the size of the Federal Government and put greater decision-making in the hands of the states. We have already seen several states take a leadership role in passing legislation and taking regulatory initiatives on monitoring for lead and proposing to set their own standards for drinking water and environmental protection. States will also have a critical role to play in



future infrastructure investments through the State Revolving Loan Funds and other financing mechanisms. This panel will share insights on the changes happening in state drinking water, wastewater, and financing programs and the role technology might play in promoting public health and environmental protection.

Alan Roberson, P.E., Executive Director, Association of State Drinking Water Administrators

The Association of State Drinking Water Administrators (ASDWA) is the professional Association serving state drinking water programs. It was formed in 1984 to address a growing need for state administrators to have national representation. ASDWA represents and advocates for state issues to Congress, the U.S. Environmental Protection Agency (EPA), and other professional organizations. Alan Roberson became ASDWA's 4th Executive Director in January 2017 following decades-long leadership as Director of Regulatory Affairs at the American Water Works Association.

Julia Anastasio, J.D. Executive Director, Association of Clean Water Agencies

Founded in 1961 and originally known as the Association of State and Interstate Water Pollution Control Administrators, the Association of Clean Water Administrators (ACWA) is a national, nonpartisan professional organization. Association members are the State, Interstate, and Territorial officials who are responsible for the implementation of surface water protection programs throughout the nation. In addition to serving as a liaison among these officials, the Association facilitates their communication with the Federal Government and promotes public education.

Rick Farrell, Executive Director, Council of Infrastructure Financing Authorities

The Council of Infrastructure Financing Authorities (CIFA) is the national organization of state, regional, and local entities working for needed environmental infrastructure funding from governments and capital markets, and for effective use of these financial resources. CIFA promotes national policies that increase and facilitate the understanding of environmental infrastructure investment, and facilitate effective funding mechanisms and delivery systems.

* 3:30 - 3:45 p.m. *

Break

* 3:45 - 4:15 p.m. *

The Economic Opportunity of Investing in Water Infrastructure

Emily Feenstra, Deputy Director, U.S. Water Alliance

We have an incredible opportunity to make needed investments in our nation's clean water and drinking water infrastructure systems. Emily Feenstra will detail the findings from a new report from the Value of Water Campaign that evaluates the economic benefits of investing in water infra-

structure. The report finds if we close the investment gap for water infrastructure, there is a ripple effect of sustained job creation, GDP growth, and other benefits.

* 4:30 - 6:30 p.m. *

Congressional Reception

Join your WWEMA colleagues and members of the National Association of Clean Water Agencies (NACWA), the Water Environmental Federation (WEF), the Water Environment and Reuse Foundation (WE&RF), the American Water Works Association (AWWA), WaterReuse, the U.S. Water Alliance, and the Association of Metropolitan Water Agencies (AMWA) for an evening of networking on Capitol Hill. The Reception will be held on the 9th Floor of the Hart Senate Office Building. Join us for food and refreshments as we mingle with friends, colleagues, Congressmen, and Congressional staff and share our story about the importance of water infrastructure.

Thursday, March 23

* 8:00 - 8:30 a.m. *

Continental Breakfast

* 8:30 - 11:30 a.m. *

This morning's speakers will focus on innovation in research, technologies, procurement, and utility operations.

The Future Direction of WWEMA

Mark Turpin, WWEMA Chair, President, Duperon Corporation

The New Precision Targeting Sales Model for the Water Industry

Ahmed Badruddin, CEO, WatrHub, Inc.

WatrHub is a fast-growing Big Data company that has introduced a novel, analytics-driven approach for water industry firms to pinpoint prospective utilities. Ahmed will share the WatrHub vision and practical applications used by companies to improve their approach to targeting sales opportunities using data.

Renewing the Water Industry - Creating the Water Resources Utility of the Future

Mike Lunn, Manager, Environmental Service Department, City of Grand Rapids, MI

Karen Pallansch, Chief Executive Officer, Alexandria Renew Enterprises, Alexandria, VA

The City of Grand Rapids, MI and Alexandria Renew (AlexRenew) Enterprises, Alexandria, VA are two outstanding examples of the water resources Utility of the Future. Through visionary and committed leadership, these utilities have gone above and beyond compliance to become agents of positive change in their communities. They have taken a holistic approach to water resources and developed partnerships to better serve their customers and

the environment. Mike and Karen will share how they are transforming the treatment of water resources and renewing the water industry.

What Technologies Do Your End Users Need and How Can you Engage?
Aaron Fisher, Ph.D., Technology and Innovation Manager, Water Environment & Reuse Foundation

Aaron will present the results of a recent survey of municipalities that identifies their technology needs and provide an update on several innovative research projects including a novel project looking at creating diesel fuel and natural gas from municipal wastewater treatment biosolids. He will also provide an update on the FAST Water (Test Bed) Network and LIFT Link and share how manufacturers can engage more directly to meet end-users needs.

* 11:30 p.m. *

Meeting Adjourns

* 12:00 - 3:00 p.m. *

WWEMA Board Lunch and Board Meeting

Thank You, Sponsors!



JCM
INDUSTRIES



K_La



WATER REMEDIATION TECHNOLOGY, LLC.



PENTAIR

Mark Your Calendar Now

**Finance & Contract
Administration Council**

May 17-18, 2017

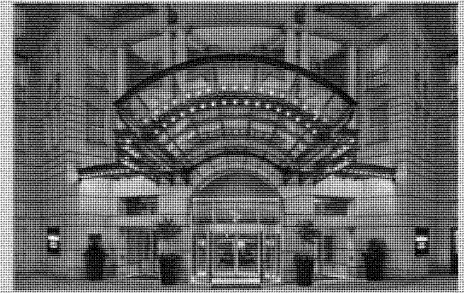
Offices of Barnes & Thornburg LLC
Chicago, IL

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale
Resort & Spa at Montelucia
Scottsdale, AZ

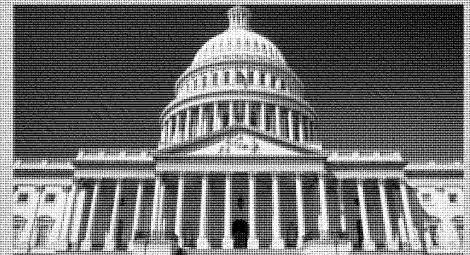
HOTEL REGISTRATION



The WWEMA 44th Washington Forum will be held March 21 -23, 2017 at The Westin Georgetown, 2350 M Street NW, Washington, DC 20037. WWEMA has secured a sleeping room rate of \$299 per night plus tax. To obtain this special group rate, rooms must be booked by **February 27, 2017.**

To book your hotel rooms, you may go directly to the Westin Georgetown web-site **WWEMA 2017 WASHINGTON FORUM**, or call the reservation line at (888) 627-8406. Indicate you are attending the WWEMA 2017 Meeting.

CONGRESSIONAL RECEPTION



WWEMA meeting attendees will join with numerous other water associations during Water Week 2017 to provide opportunities for collaboration and to unite as "one voice for water." One of these opportunities is a Congressional Reception being held Wednesday, March 22 in Room 902 of the Senate Hart Office Building. This evening will provide an opportunity for networking with Congressmen, Hill staff, and attendees from water associations who will all be in DC this week for Water Week 2017 events.

Busses will leave the hotel at 4:30 p.m. sharp and return WWEMA attendees back to The Westin Georgetown at 6:30 p.m. Attendance at this event is included in your registration fee and all are strongly encouraged to attend. WWEMA Members will be given an opportunity to invite their Congressional delegations to the event.

WWEMA 44th WASHINGTON FORUM

REGISTRATION (NOTE: Online registration is available at www.wwema.org/washingtonforum.php)

CONTACT INFORMATION (Please make copies of this form for additional registrants.)

Full Name: _____ First Name (for badge) _____
Title: _____
Company: _____
Street Address: _____
City: _____ State: _____ Zip Code: _____
Phone: _____ Email: _____

REGISTRATION FEE/ PAYMENT INFORMATION

		Quantity	Amount
WWEMA Member - First Registrant	\$875	_____	_____
WWEMA Member - Additional Registrant	\$775	_____	_____
WWEMA Member - Young Professional/New Entrant	\$450	_____	_____
Non-member*	\$1,250	_____	_____

SPONSORSHIPS (please circle one)

		Quantity	Amount		
Platinum (\$1,500)	Gold (\$1,000)	Silver (\$750)	Bronze (\$500)	_____	_____

TOTAL AMOUNT DUE

PAYMENT

* * * **Check enclosed** (payable to WWEMA)

* * * **Credit card** (please circle one)

MasterCard

Visa

AmEx

Name on card: _____

Card number: _____

Expires: _____ Security ID #: _____

Billing Address for card: _____

CANCELLATION POLICY:

A full refund of all Washington Forum registration fees (less and \$85 processing fee) will be issued on all cancellations received by March 3. Thereafter, a 50% refund will be issued on cancellations received by March 15. No refund will be issued for cancellations made after March 15.

NON-MEMBER ATTENDANCE POLICY:

* Attendance at the Washington Forum is available to non -members one-time only. If you or someone from your company has attended the Washington Forum previously, you must join WWEMA to be eligible to register. For membership information, please call (703) 444-1777.



Send form with payment to:
WWEMA
540 Fort Evans Road, Suite 304
Leesburg, VA 20176-3379

Via email to: anita@wwema.org
Or register online at:
www.wwema.org/washingtonforum.php
Questions? Call (703) 444-1777

To: Schnare, David[schnare.david@epa.gov]; Fulton, Finch (OST)[Finch.Fulton@dot.gov]
From: Smith, Loren (OST)
Sent: Mon 3/6/2017 1:31:09 PM
Subject: Re: CAFE

My guess is we're still going to need today for our legal to review. Finch?

Sent from my iPhone

On Mar 6, 2017, at 7:59 AM, Schnare, David <schnare.david@epa.gov> wrote:

Is the FR Notice in final final and ready for signing? If so, please send it back so I can get it to the auto pen.

dschnare

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: Alex Guillen
Sent: Thur 3/16/2017 5:43:51 PM
Subject: Leaving EPA?

Hi David,

I saw Greenwire's report that you are resigning from the agency. Is that true? Why are you leaving EPA before the transition is complete?

Thanks for your help,

Alex Guillén

Energy Reporter

POLITICO *Pro*

(o) 703.341.4619 | (c) Personal Phone/Ex. 6

aguillen@politico.com | @alexcg Guillen

To: Rees, Sarah[rees.sarah@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Kime, Robin[Kime.Robin@epa.gov]
From: Dravis, Samantha
Sent: Tue 3/7/2017 1:47:03 PM

Sarah,

There are several items that were approved last Friday that I neglected to notify you about. The time-limited tolerances for Flupyradifurone, Streptomycin, and Oxytetracycline are approved.

Would you mind updating the FR Queue list to reflect this, and where there are cells that do not indicate what the deadline is, is there any way you could have someone update those?

Many thanks for all your work, Sarah.

Samantha

To: Schnare, David[schnare.david@epa.gov]
From: Brazauskas, Joseph
Sent: Thur 3/9/2017 4:45:05 PM
Subject: Call

Hey David – do you have time for a quick call between now and 4:00 p.m. by any chance?

Thank you,

Joe

Joseph A. Brazauskas

Staff Director and Senior Counsel

Subcommittee on Environment

Committee on Science, Space and Technology

Lamar Smith, Chairman

P: (202) 225-6371

To: Schnare, David[schnare.david@epa.gov]
From: Neugeboren, Steven
Sent: Fri 3/10/2017 9:50:28 PM
Subject: Automatic reply: Pebble mine

I'm out of the office on Friday, March 10. If you need assistance while I'm out please contact Jim Curtin at 564-5482.

To: Schnare, David[schnare.david@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
From: Cleland-Hamnett, Wendy
Sent: Wed 3/8/2017 5:45:46 PM
Subject: Re: TBBPA Section 21 Petition

Thx.

Wendy Cleland-Hamnett
Acting Assistant Administrator
Principal Deputy Assistant Administrator
Office of Chemical Safety & Pollution Prevention
U.S. EPA

On Mar 8, 2017, at 12:21 PM, Schnare, David <schnare.david@epa.gov> wrote:

I will check in on this but will recommend that Deliberative Process Privilege/Ex. 5

Sent from my iPhone

On Mar 8, 2017, at 11:03 AM, Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov> wrote:

Deliberative Process Privilege/Ex. 5

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator
Office of Chemical Safety & Pollution Prevention
U.S. Environmental Protection Agency
202-564-2910
cleland-hamnett.wendy@epa.gov

From: Schnare, David
Sent: Wednesday, March 08, 2017 10:53 AM
To: Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>
Cc: Flynn, Mike <Flynn.Mike@epa.gov>; Dravis, Samantha
<dravis.samantha@epa.gov>
Subject: Re: TBBPA Section 21 Petition

Deliberative Process Privilege/Ex. 5

Sent from my iPhone

On Mar 8, 2017, at 10:51 AM, Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov> wrote:

Thanks for letting me know.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

From: Schnare, David

Sent: Wednesday, March 08, 2017 10:42 AM

To: Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>

Cc: Flynn, Mike <Flynn.Mike@epa.gov>; Dravis, Samantha
<dravis.samantha@epa.gov>

Subject: TBBPA Section 21 Petition

Deliberative Process Privilege/Ex. 5

dschnare

To: Schnare, David[schnare.david@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]
From: Jackson, Ryan
Sent: Mon 3/6/2017 4:21:16 PM
Subject: Re: Elevation: AFPM request to delay the RFS 2016 compliance deadline

I'll also work with Chet.

Ryan Jackson
Chief of Staff
U.S. EPA
Personal Phone/Ex. 6

On Mar 6, 2017, at 9:11 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5 I will land shortly.

Ryan Jackson
Chief of Staff
U.S. EPA
Personal Phone/Ex. 6

On Mar 6, 2017, at 8:53 AM, Schnare, David <schnare.david@epa.gov> wrote:

Deliberative Process Privilege/Ex. 5

The basic information is in the attachments.

We also need to determine if this should be done through a briefing for the Administrator.

Please let me know your views on this by COB.

David.

From: Dunham, Sarah
Sent: Monday, March 6, 2017 10:33 AM
To: Flynn, Mike <Flynn.Mike@epa.gov>; Schnare, David <schnare.david@epa.gov>
Cc: Connors, Sandra <Connors.Sandra@epa.gov>; Hull, George <Hull.George@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: Elevation: AFPM request to delay the RFS 2016 compliance deadline

We have a new renewable fuels related question that we believe needs elevating, particularly given the recent direction related to delegation. So in addition to the fuels waivers recommended denials which we are still holding on until we get further feedback, we have a separate request from the American Fuel and Petrochemical Manufacturers (AFPM) that EPA delay the compliance deadline for the 2016 annual RFS standards (incoming request is attached). The compliance deadline (by regulation) is March 31, 2017.

Deliberative Process Privilege/Ex. 5

OAR's recommendation is **Deliberative Process Privilege/Ex. 5**

Deliberative Process Privilege/Ex. 5

Thank you!

<AFPM Compliance Delay Request briefing document 3.4.17.docx>

<AFPM incoming 2016 RFS request to delay compliance 022417 final.pdf>

To: Schnare, David[schnare.david@epa.gov]
From: Sarvadi, David G.
Sent: Thur 3/16/2017 5:28:09 PM
Subject: RE: Contact info?

Thanks for setting us yesterday. I called Jeff Morris and meet him at noon and have him copies of the two documents from yesterday. I had sent him the tsca summary earlier. I told him that the was an easy solution if the go the Ive route. And that we had been talking to new chemicals team for weeks. I plan to follow up with him tomorrow.
Letters are in process.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Schnare, David"
Date: 02/20/2017 5:00 PM (GMT-05:00)
To: "Sarvadi, David G."
Subject: Re: Contact info?

Thx

dschnare

Sent from my iPhone

On Feb 20, 2017, at 4:41 PM, Sarvadi, David G. <Sarvadi@khlaw.com> wrote:

Cordially,
DGS

David G. Sarvadi
Attorney-at-Law
tel: 202-434-4249 fax 202-434-4646 | sarvadi@khlaw.com
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that will cover OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at



Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

To: Schnare, David[schnare.david@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/7/2017 1:45:36 PM
Subject: Re: RE:

Thanks. Taking off momentarily.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

> On Mar 7, 2017, at 6:45 AM, Schnare, David <schnare.david@epa.gov> wrote:
>
> OGC plans to have WOTUS-like ANPRMs for this EO to me this morning.
>
> dschnare
>
> -----Original Message-----
> From: Jackson, Ryan
> Sent: Tuesday, March 7, 2017 8:28 AM
> To: Schnare, David <schnare.david@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>;
Brown, Byron <brown.byron@epa.gov>
> Subject:
>
> What are are looking at now.
>

To: Schnare, David[schnare.david@epa.gov]
From: Coleman, Sam
Sent: Wed 3/1/2017 5:41:51 PM
Subject: Re: TX, OK, and AR

Thanks. Call when you can. No specific issue, just to chat.

Samuel Coleman, P. E.,
Deputy Regional Administrator

214.665.2100 Ofc
214.665. 3110 Desk
214.665.2016 Cell

Coleman.sam@epa.gov

Sent from my iPhone

On Mar 1, 2017, at 11:30 AM, Schnare, David <schnare.david@epa.gov> wrote:

Ryan

I already gave the go ahead on this as it extends the comment period and preserves all our prerogatives.

dschnare

Sent from my iPhone

On Feb 28, 2017, at 9:14 AM, Coleman, Sam <Coleman.Sam@epa.gov> wrote:

Ryan,

As requested, the purpose of this email is to get your

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Background:

EPA issued a FIP for Arkansas in September 2016. Among other things, the FIP set emission limits based on the best available retrofit technology (BART) at 2 power plants (White Bluff, Flint Creek) and established reasonable progress requirements at another power plant (Independence).

Arkansas, Entergy, and others filed suit in the 8th Circuit. In February, Arkansas and Entergy filed motions with the court asking it to stay the FIP. EPA's response to those motions is due March 8th.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Samuel Coleman, P. E.,
Deputy Regional Administrator

214.665.2100 Ofc
214.665. 3110 Desk
214.665.2016 Cell

Coleman.sam@epa.gov

Sent from my iPhone

On Feb 27, 2017, at 9:39 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Sam,

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

I'm providing this information to update the Administrator.

Thanks

Ryan.

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

Personal Phone/Ex. 6

To: Smith, Loren (OST)[Loren.Smith@dot.gov]; Konkus, John[konkus.john@epa.gov]; Schnare, David[schnare.david@epa.gov]; McInerney, Marianne (OST)[marianne.mcinerney@dot.gov]; Moore, Allison (OST)[A.Moore@dot.gov]; Fulton, Finch (OST)[Finch.Fulton@dot.gov]; Pugliese, Anthony (OST)[anthony.Pugliese@dot.gov]; McCown, Brigham (OST)[brigham.mccown@dot.gov]
From: Grantham, Nancy
Sent: Mon 3/13/2017 10:51:15 PM
Subject: RE: CAFE notice

Thanks

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Smith, Loren (OST) [mailto:Loren.Smith@dot.gov]
Sent: Monday, March 13, 2017 6:50 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Konkus, John <konkus.john@epa.gov>; Schnare, David <schnare.david@epa.gov>; McInerney, Marianne (OST) <marianne.mcinerney@dot.gov>; Moore, Allison (OST) <A.Moore@dot.gov>; Fulton, Finch (OST) <Finch.Fulton@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; McCown, Brigham (OST) <brigham.mccown@dot.gov>
Subject: RE: CAFE notice

Hi Nancy – the notice will be on the Federal Register’s website on Wednesday and then likely published in physical form on Thursday. Not sure yet on time of day, but I did ask, hoping to hear back soon.

I’m told that the snow shouldn’t be a problem here, as the FR uses teleworkers on their internal circulation processing, but this is not guaranteed, either.

From: Grantham, Nancy [<mailto:Grantham.Nancy@epa.gov>]
Sent: Monday, March 13, 2017 5:19 PM
To: Smith, Loren (OST); Konkus, John
Cc: Grantham, Nancy
Subject: FW: CAFE notice

Hi Loren,

For our briefing for the White House re: Wednesday's event – we need to know when this will be published in the FR?

Thanks

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Schnare, David
Sent: Monday, March 13, 2017 1:05 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Fwd: CAFE notice

Please handle and let me know.

d

Sent from my iPhone

Begin forwarded message:

From: "Smith, Loren (OST)" <Loren.Smith@dot.gov>

Date: March 13, 2017 at 12:59:48 PM EDT

To: David Schnare <schnare.david@epa.gov>

Subject: CAFE notice

Please email me the final Word doc version as well - it is part of the Federal Register submission process.

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Neugeboren, Steven
Sent: Mon 3/13/2017 3:24:34 PM
Subject: RE: Pebble mine

Understood. Helpful guidance as we head into a meeting with Pebble later this week.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Schnare, David
Sent: Friday, March 10, 2017 4:50 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>
Subject: RE: Pebble mine

Deliberative Process/Attorney Client Privilege/Ex. 5

dschnare

From: Neugeboren, Steven

Sent: Friday, March 10, 2017 4:28 PM

To: Schnare, David <schnare.david@epa.gov>

Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>

Subject: RE: Pebble mine

David – thanks for the information in your email below.

Deliberative Process/Attorney Client Privilege/Ex. 5

Thanks

Steve

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Schnare, David

Sent: Wednesday, March 08, 2017 10:46 AM

To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Shapiro, Mike
<Shapiro.Mike@epa.gov>

Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>;
Flynn, Mike <Flynn.Mike@epa.gov>

Subject: Pebble mine

The Administrator has concluded that we have failed to give Pebble sufficient due process. He agrees we should settle this matter and should ask the court for more time, if necessary, to conclude a settlement.

Deliberative Process Privilege/Ex. 5

dschnare

To: Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Brown, Byron
Sent: Thur 3/9/2017 4:41:31 PM
Subject: Risk Management Plan Request for Reconsideration

Ryan and Samantha -- Just a quick update. OGC is working with OLEM to prepare (1) a draft letter granting the petition for reconsideration we received from several industry groups and (2) a draft FR notice that references the letter and grants a 90-day stay of the effectiveness of the rule pursuant to section 307 of the Clean Air Act. They expect to have drafts ready for our review early next week so they can get signed and issued before the rule goes into effect on March 21. Also, Patrick Davis informed me about a meeting OGC and OLEM are having this afternoon with the petitioners to go over the petition. It sounds like Patrick and George are going, but I will try to go as well.

To: Schnare, David[schnare.david@epa.gov]
From: Grantham, Nancy
Sent: Wed 3/8/2017 12:28:05 PM
Subject: East Chicago Job training opportunity -- fyi
USS SuperJTI Lead Outreach Flyer 3-2-17.pptx

Hi – just learned of this last night – we are sponsoring job training opportunities in east Chicago
– you may want to mention in east Chicago update – I alerted John Konkus

Thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

East Chicago, Indiana

Superfund Job Training Initiative 2017



Are you looking for job training? Do you enjoy working outdoors?

The U.S. Environmental Protection Agency is offering a program to train local residents for environmental jobs in the East Chicago area. This program will provide participants with two certifications and prepare them for careers in environmental cleanup work.*

Participants will be trained in:

1. Job Readiness Skills
2. Hazardous Waste Operations and Emergency Response (40-hr HAZWOPER)
3. CPR/First Aid

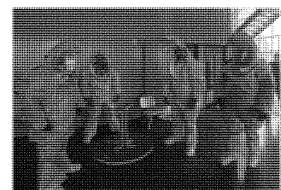
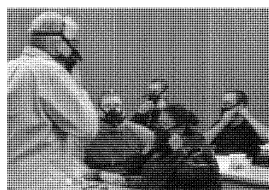
TRAINING IS FREE FOR PARTICIPANTS!

To be considered for the program, you **MUST** attend **ONE** of the scheduled information sessions held at:

**East Chicago Public Library
Pastrick Branch
1008 W. Chicago Ave.,
East Chicago, IN 46312**

Thurs., March 23rd at 10:30 am or 1:30 pm
Fri., March 24th at 10:30 am or 1:30 pm
Mon., March 27th at 10:30 am or 1:30 pm
Tues., March 28th at 10:30 am or 1:30 pm

Program Requirements



- Be 18 years or older.
- Be unemployed or underemployed.
- Be eligible for employment in the United States.
- Be willing to participate in a 2-week unpaid training program in April, up to 10 hrs/day.
- Physically able to lift up to 50 pounds.
- Be willing to work outdoors in all weather conditions.
- Must have access to transportation to a job site.
- Able to pass a drug test and background check.
- Have a valid driver's license.
- Have a high school diploma or GED.

**Entry into SuperJTI is on a competitive basis. Job placement is not guaranteed.*



ED_001612_00029017-00001

East Chicago, Indiana Superfund Job Training Initiative 2017



¿Busca una capacitación laboral? ¿Disfruta de trabajar al aire libre?

La Agencia de Protección Ambiental de los EE. UU. ofrece un programa para capacitar a los residentes locales en trabajos ambientales en East Chicago. Este programa ofrecerá certificaciones en dos áreas especializadas para preparar los participantes para carrera en el campo de limpieza ambiental.*

Los participantes serán capacitados en:

1. Habilidades de preparación laboral
2. Operaciones de manejo de desechos peligrosos y respuesta a emergencias (40-hs HAZWOPER)
3. RCP/Primeros auxilios

¡LA CAPACITACIÓN ES GRATUITA PARA LOS PARTICIPANTES!

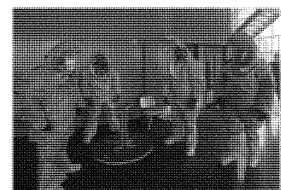
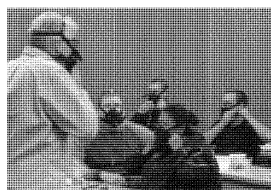
Para ser considerado para este programa, usted debe asistir a UNA de las cuatro sesiones de información celebradas en:

**East Chicago Public Library
Pastrick Branch
1008 W. Chicago Ave.,
East Chicago, IN 46312**

jueves, 23 de marzo a las 10:30 am o a la 1:30 pm
viernes, 24 de marzo a las 10:30 am o a la 1:30 pm
lunes, 27 de marzo a las 10:30 am o a la 1:30 pm
martes, 28 de marzo a las 10:30 am o a la 1:30 pm

PARA PRE-INSCRIBIRSE A UNA DE ESTAS
SESIONES COMPULSORIAS LLAME: (312) 742

Requisitos del



- Mayores de 18 años.
- Actualmente subempleado o desempleado.
- Elegible para trabajar en Estados Unidos.
- Disponible para asistir a un programa de capacitación sin pago durante dos semanas en abril, hasta 10 hs/día.
- Físicamente capaz de levantar 50 libras.
- Estar dispuesto a trabajar al aire libre en todas condiciones climáticas.
- Tener acceso a transporte a un sitio de trabajo.
- Capaz de pasar una prueba de drogas y una verificación de antecedentes.
- Licencia de conducir válida.
- Título secundario o Examen de desarrollo de educación general (GED).

**El ingreso a SuperJTI se realiza según una base competitiva. La colocación laboral no está garantizada.*



To: Schnare, David[schnare.david@epa.gov]
From: Mortimer, Megan
Sent: Thur 3/16/2017 4:17:53 PM
Subject: RE: Meeting Request RE NESHAP for Felman

Mr. Schnare,
Is there a time in the coming weeks that would be convenient for you to meet?
Thanks so much!
-Megan Mortimer

Megan M. Mortimer, Government Relations Professional
Cozen O'Connor Public Strategies
1200 19th Street, NW | Washington, DC 20036
P: [Personal Phone/Ex. 6](#) F: 202-640-5936
[Email](#) | [Bio](#) | [LinkedIn](#) | [Map](#) | [cozen.com](#)

-----Original Message-----
From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Wednesday, March 15, 2017 11:34 AM
To: Mortimer, Megan <MMortimer@cozen.com>
Subject: RE: Meeting Request RE NESHAP for Felman

Megan:

My apologies for not responding sooner. I simply am unable to meet tomorrow.

David Schnare

-----Original Message-----
From: Mortimer, Megan [mailto:MMortimer@cozen.com]
Sent: Wednesday, March 15, 2017 11:28 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: FW: Meeting Request RE NESHAP for Felman

Good Morning Mr. Schnare,
I apologize for following up so quickly but since this request is for tomorrow I thought I would give it a try!

Please let me know if you have any availability tomorrow.

Thanks so much!
-Megan M.

Megan M. Mortimer, Government Relations Professional Cozen O'Connor Public Strategies
1200 19th Street, NW | Washington, DC 20036
P: [Personal Phone/Ex. 6](#) F: 202-640-5936
[Email](#) | [Bio](#) | [LinkedIn](#) | [Map](#) | [cozen.com](#)

-----Original Message-----
From: Mortimer, Megan

Sent: Tuesday, March 14, 2017 3:43 PM
To: schnare.david@epa.gov
Subject: Meeting Request RE NESHAP for Felman

>> Good Afternoon Mr. Schnare,

>>

>> I am writing to request a meeting with you on behalf of our client Felman Production to discuss the NESHAP final rule regarding the production of ferroalloys. We know that you have had conversations with representatives from Eramet Marietta on this issue and they thought it would be beneficial for us to reach out to you as well.

>>

>> It turns out that the General Counsel for Felman, Robert Powell, will be in DC this Thursday March 16. Do you have any time on that day for a meeting with Mr. Powell?

>>

>> Thanks so much!

>> Megan Mortimer

>>

>> Megan Mortimer, Cozen O'Connor Public Strategies

>> Personal Phone/Ex. 6

>>

>> Sent from my iPad

Notice: This communication, including attachments, may contain information that is confidential and protected by the attorney/client or other privileges. It constitutes non-public information intended to be conveyed only to the designated recipient(s). If the reader or recipient of this communication is not the intended recipient, an employee or agent of the intended recipient who is responsible for delivering it to the intended recipient, or you believe that you have received this communication in error, please notify the sender immediately by return e-mail and promptly delete this e-mail, including attachments without reading or saving them in any manner. The unauthorized use, dissemination, distribution, or reproduction of this e-mail, including attachments, is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) is not a waiver of any attorney/client or other privilege.

Notice: This communication, including attachments, may contain information that is confidential and protected by the attorney/client or other privileges. It constitutes non-public information intended to be conveyed only to the designated recipient(s). If the reader or recipient of this communication is not the intended recipient, an employee or agent of the intended recipient who is responsible for delivering it to the intended recipient, or you believe that you have received this communication in error, please notify the sender immediately by return e-mail and promptly delete this e-mail, including attachments without reading or saving them in any manner. The unauthorized use, dissemination, distribution, or reproduction of this e-mail, including attachments, is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) is not a waiver of any attorney/client or other privilege.

To: Schnare, David[schnare.david@epa.gov]
Cc: Brown, Byron[brown.byron@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/7/2017 1:37:45 PM
Subject: Re: RFS hardship denial recommendation

I can't guarantee today and this is a big deal to deny these petitions.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

On Mar 7, 2017, at 6:17 AM, Schnare, David <schnare.david@epa.gov> wrote:

Please provide me your recommendation per the attached. It would be very helpful to deal with this today.

Samantha and I agree with the OAR recommendation denying the exemptions.

dschnare

<RFS Small Refinery Hardship Denials.docx>

To: Schnare, David[schnare.david@epa.gov]
From: Richard Kinch
Sent: Sat 2/18/2017 5:08:04 PM
Subject: Scott Pruitt - Wall Street Journal Article

David,

A brief point you may want to pass on to Administrator Pruitt...

In today's WSJ there is an article on Administrator Pruitt, which includes the following:

"Look at what is happening in California," where the Oroville Dam's failure endangers tens of thousands of homes.

For the most part, EPA does not address dam safety. We did for the Coal Ash Rule, but I believe the approach was a mistake. There was no dam safety expertise at EPA. I got my staff a 1 day training, we hired a bunch of knowledgeable contractors, spent about \$5 million inspecting coal ash dams, and then issued regulations largely based on those of the U.S Department of Labor, Mine Safety, and Health Administration (MSHA). (Note, MSHA regulations were an outgrowth of the Buffalo Creek coal slurry dam failure in West Virginia in 1972 which killed 125 people – so the issue very much pertains to saving human life.) My rejected recommendation regarding the Coal Ash Rule and dam safety was to see if one of the other Federal Agencies that actually have dam safety experience and expertise would address the matter, and to work with the State regulators (all but 1 state had dam safety programs). Since 1980 numerous Federal Agencies with responsibility for dam safety have coordinated through the Interagency Committee on Dam Safety (ICODS) – EPA has never been a member, nor have they developed the expertise. Participating Agencies of ICODS are:

U.S. Bureau of Reclamation

Federal Insurance and Mitigation Administration; DHS/FEMA

Tennessee Valley Authority

Federal Energy Regulatory Commission

USDA/Natural Resources Conservation Service

U.S. Nuclear Regulatory Commission

U.S. Department of Energy

U.S. Department of Labor, Mine Safety, and Health Administration

International Boundary and Water Commission

U.S. Army Corp of Engineers

So, if Administrator Pruitt is faced with getting more involved in the issue of dam safety, I continue to point out that there are other Federal Agencies and State programs with vastly greater expertise in this area. If there are weaknesses in the current programs, ICODS and State dam safety programs are far better positioned than EPA to address those matters.

I hope this information is helpful.

Richard

To: Grantham, Nancy[Grantham.Nancy@epa.gov]; Konkus, John[konkus.john@epa.gov]; Schnare, David[schnare.david@epa.gov]; McInerney, Marianne (OST)[marianne.mcinerney@dot.gov]; Moore, Allison (OST)[A.Moore@dot.gov]; Fulton, Finch (OST)[Finch.Fulton@dot.gov]; Pugliese, Anthony (OST)[anthony.Pugliese@dot.gov]; McCown, Brigham (OST)[brigham.mccown@dot.gov]
From: Smith, Loren (OST)
Sent: Mon 3/13/2017 10:50:10 PM
Subject: RE: CAFE notice

Hi Nancy – the notice will be on the Federal Register’s website on Wednesday and then likely published in physical form on Thursday. Not sure yet on time of day, but I did ask, hoping to hear back soon.

I’m told that the snow shouldn’t be a problem here, as the FR uses teleworkers on their internal circulation processing, but this is not guaranteed, either.

From: Grantham, Nancy [mailto:Grantham.Nancy@epa.gov]
Sent: Monday, March 13, 2017 5:19 PM
To: Smith, Loren (OST); Konkus, John
Cc: Grantham, Nancy
Subject: FW: CAFE notice

Hi Loren,

For our briefing for the White House re: Wednesday’s event – we need to know when this will be published in the FR?

Thanks

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Schnare, David
Sent: Monday, March 13, 2017 1:05 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Fwd: CAFE notice

Please handle and let me know.

d

Sent from my iPhone

Begin forwarded message:

From: "Smith, Loren (OST)" <Loren.Smith@dot.gov>
Date: March 13, 2017 at 12:59:48 PM EDT
To: David Schnare <schnare.david@epa.gov>
Subject: CAFE notice

Please email me the final Word doc version as well - it is part of the Federal Register submission process.

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: Jackson, Ryan
Sent: Mon 3/13/2017 3:17:50 PM
Subject: Fwd: CAFE Mid-Term Evaluation

David can you help me with this.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

Begin forwarded message:

From: "Thomasson, Russell (WAS-CAS)" <RThomasson@cassidy.com>
Date: March 13, 2017 at 8:46:45 AM EDT
To: "Ryan Jackson" <jackson.ryan@epa.gov>
Subject: FW: CAFE Mid-Term Evaluation

Sorry, meant to send to your official address. Realize this is a stretch but thanks for considering.

Russell J. Thomasson
Executive Vice President
733 Tenth Street, NW, Suite 400
Washington, DC 20001
202.585.2554 (direct)

Personal Phone/Ex. 6

www.cassidy.com

CASSIDY&ASSOCIATES

From: Russell Thomasson <RThomasson@cassidy.com>
Date: Friday, March 10, 2017 at 12:46 PM
To: Ryan Jackson <**Personal Email/Ex. 6**>
Subject: FW: CAFE Mid-Term Evaluation

Ryan, I realize you are completely slammed and that there is no way you can handle everything coming at you! Arconic (they spun off from Alcoa) is looking for a meeting with someone who can talk upcoming CAFE changes. Recognize this probably isn't possible, but if there was someone from them to do a quick call with so they can lay out their concerns, I would appreciate it. Thanks Russ

Russell J. Thomasson
Executive Vice President

733 Tenth Street, NW, Suite 400
Washington, DC 20001
202.585.2554 (direct)
202.826.4491 (cell)
www.cassidy.com

CASSIDY&ASSOCIATES

From: "Belwood, Mike E." <Mike.Belwood@arconic.com>
Date: Friday, March 10, 2017 at 11:48 AM
To: Russell Thomasson <RThomasson@cassidy.com>
Subject: CAFE Mid-Term Evaluation

Russ:

We are hearing that EPA/NHTSA will announce next week that they are putting the MTE back to regular order, rescinding EPA's determination in January that the rule should stand. There's also some indication that there is support for using this process to roll back CAFE. Arconic and the aluminum industry have worked with the automakers and support their call for One National Program, but we are growing increasingly concerned that our interest in this issue is not fully understood.

Since 2102, we have invested \$750 million to expand capacity in the US to support the growing use of aluminum in cars and trucks. As an industry, aluminum has invested nearly \$3 billion to expand to serve this growing need, creating thousands of jobs.

We would like to make sure that the team guiding this process understands this. Would it be possible to meet with someone at EPA prior to the upcoming announcement so they have this perspective? And with more time on both sides, we can bring in our executives for a more full discussion. We are very willing to serve as a resource for the supplier industry as the process unfolds.

Appreciate your thoughts and help.

Michael E. Belwood

Vice President, Government Affairs

Arconic

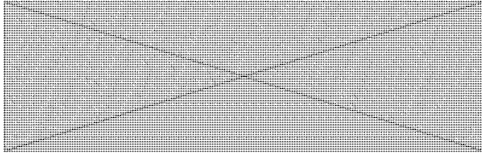
1050 K St NW, Suite 1100

Washington, DC 20001

(O) +1 202-956-5315

Personal Phone/Ex. 6

Arconic.com / mike.belwood@arconic.com



This message contains information which may be confidential and privileged. Unless you are the intended recipient (or authorized to receive this message for the intended recipient), you may not use, copy, disseminate or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail, and delete the message. Thank you very much.

***** ATTACHMENT REMOVED

This message contained an attachment which the administrator has caused to be removed.

***** ATTACHMENT REMOVED

Attachment name: [image001.jpg]
Attachment type: [image/jpeg]

CASSIDY&ASSOCIATES

To: Don Benton[**Personal Email/Ex. 6**]; Ericksen, Doug[ericksen.doug@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Konkus, John
Sent: Wed 2/15/2017 3:57:01 PM
Subject: FW: TONIGHT: Rally to stop Scott Pruitt from leading the EPA

FYI

<https://earthhq.foe.org/>
https://org.salsalabs.com/o/455/p/salsa/donation/common/public/?donate_page_KEY=14387&tag
<http://www.beeaction.org/about>
https://org.salsalabs.com/o/455/p/salsa/donation/common/public/?donate_page_KEY=14387&tag

<https://earthhq.foe.org/>
https://org.salsalabs.com/o/455/p/salsa/donation/common/public/?donate_page_KEY=14387&tag
<http://www.beeaction.org/about>
https://org.salsalabs.com/o/455/p/salsa/donation/common/public/?donate_page_KEY=14387&tag

<p><u>Join the rally to stop</u> <u>Scott Pruitt from</u> <u>leading the EPA: RSVP</u> <u>NOW!</u></p>
--

The Senate is scheduled to vote on Friday on Scott Pruitt to lead the EPA. Pruitt is a climate denier and Big Oil crony who is openly hostile to the EPA's mission.

The vote will be very, very close. So now, in the final hours before the vote, we need your help to keep the pressure on the Senate to vote no!

Join the rally in DC tonight to stop Scott Pruitt from leading the EPA!

What: Rally to stop Scott Pruitt

When: Today at 5 pm

Where: Upper Senate Park, 200 New Jersey Ave. NW, Washington, DC 20001

Click here to RSVP!

Scott Pruitt would be the most anti-environmental EPA Administrator in history. And he's spent his career suing the agency.

As Oklahoma's Attorney General, he boasted that he "led the charge ... against the U.S. Environmental Protection Agency for their leadership's activist agenda."

He has sued the EPA multiple times to roll back the Clean Power Plan and the Clean Water Rule.

And he literally copied an anti-EPA letter sent to him by Big Oil lobbyists, pasted it onto government stationery, and sent it to Washington with his signature.

We need your help to send the message to Congress: Scott Pruitt should not lead the EPA!

It's no secret why Pruitt has been so hostile to the EPA. He's received nearly \$315,000 in political contributions from fossil fuel industries. And while leading the Republican Attorneys General Association, he raised at least \$3.5 million from fossil fuel interests.

We cannot afford to let Scott Pruitt have this job. Our bedrock environmental protections are at stake. Unless we fight back, we'll have no more Clean Power Plan. No more methane rules. And our environmental policy could be dictated by the oil industry at the expense of the American people.

Donald Trump's first 100 days are shaping up to be an environmental nightmare. He's trying to roll back regulations, build the Keystone XL Pipeline, and gut President Obama's climate legacy. Scott Pruitt is a key component of Trump's anti-environmental agenda. But we still have a chance to stop him.

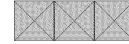
Join the rally TONIGHT, before Friday's vote, to stop Scott Pruitt from destroying to planet!

Standing with you,

Ben Schreiber,
Senior political strategist,
Friends of the Earth

1-877-843-8687
Contact us »

[Click here to unsubscribe »](#)



www.foe.org/news »
www.foe.org/about-us »

© 2015, Friends of the Earth. All Rights Reserved.

earthhq.foe.org/

To: Schnare, David[schnare.david@epa.gov]
From: Dravis, Samantha
Sent: Wed 3/8/2017 12:00:22 PM
Subject: RE: Checking in

Ok coming to visit you

-----Original Message-----

From: Schnare, David
Sent: Wednesday, March 8, 2017 7:00 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: Checking in

yes

-----Original Message-----

From: Dravis, Samantha
Sent: Wednesday, March 8, 2017 6:59 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Checking in

Are you in the office, David?

-----Original Message-----

From: Schnare, David
Sent: Wednesday, March 8, 2017 6:58 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Benton, Donald <benton.donald@epa.gov>
Cc: Flynn, Mike <Flynn.Mike@epa.gov>
Subject: RE: Checking in

Mike Flynn and I hold an afternoon meeting with selected AO staff to figure out what we need to get before the Administrator at the next morning's Chief of Staff meeting. You are welcome. The time of the meeting tends to bounce around between 3 and 4. Mike Flynn sets this up. I'm cc'ing him on this to ensure you are invited.

D.

-----Original Message-----

From: Dravis, Samantha
Sent: Wednesday, March 8, 2017 6:56 AM
To: Benton, Donald <benton.donald@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: FW: Checking in

Good morning gentlemen!

I'm not sure what the 3pm meeting Shannon is referring to is, but from now on I would like to attend that going forward instead of Shannon. Could you forward me calendar invitations?

Thank you!

-----Original Message-----

From: Kenny, Shannon
Sent: Tuesday, March 7, 2017 5:40 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>
Subject: Checking in

Hi Samantha,

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Personal Matters/Ex. 6

I attended the 3:00 daily meeting with David and Don today. We may want to talk more about that process and how to make it serve the Administrator better. It may also be good to chat about how to make it serve you better in your AA role.

Shannon

Sent from my iPhone

To: Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Reeder, John[Reeder.John@epa.gov]; Schnare, David[schnare.david@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Hull, George[Hull.George@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]; Breen, Barry[Breen.Barry@epa.gov]; Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]
Cc: Lewis, Josh[Lewis.Josh@epa.gov]; Cyran, Carissa[Cyran.Carissa@epa.gov]; Fonseca, Silvina[Fonseca.Silvina@epa.gov]; Burden, Susan[Burden.Susan@epa.gov]; Hautamaki, Jared[Hautamaki.Jared@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Page, Steve[Page.Steve@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]; Owens, Nicole[Owens.Nicole@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]
From: Knapp, Kristien
Sent: Tue 3/14/2017 10:36:50 PM
Subject: Signed - Extension of Effective Dates
[Effective Date Extension.pdf](#)

This afternoon, Administrator Pruitt signed a final rule titled, "Further Delay of Effective Dates for Five Final Regulations Published by the Environmental Protection Agency Between December 12, 2016 and January 17, 2017." A copy of the signed notice is attached.

Thanks,

Kristien

Kristien Knapp

Special Assistant, Office of the Administrator

U.S. Environmental Protection Agency

(202) 564-3277

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 22, 51, 124, 171, 300, and 770****[FRL-9960-28-OP]****Further Delay of Effective Dates for Five Final Regulations Published by the Environmental Protection Agency Between December 12, 2016 and January 17, 2017****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; further delay of effective dates.

SUMMARY: In accordance with the Presidential directive as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” and the **Federal Register** document published by EPA on January 26, 2017, EPA is further delaying the effective dates for the five regulations listed in the table below.

DATES: This regulation is effective March 21, 2017. The effective date of each regulation listed in the table below is delayed to a new effective date of May 22, 2017.

FOR FURTHER INFORMATION CONTACT:

Sarah Rees, Director, Office of Regulatory Policy and Management, Office of Policy, Mail code 1804, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW., Washington, DC 20460; (202) 564-1986; rees.sarah@epa.gov.

SUPPLEMENTARY INFORMATION: On January 26, 2017, EPA published a document in the **Federal Register** entitled “Delay of Effective Date for 30 Final Regulations Published by the Environmental Protection Agency Between October 28, 2016 and January 17, 2017” (82 FR 8499) (January 26 Document). In that document, EPA delayed the effective dates of the five regulations listed in the table below to March 21, 2017, as requested in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory

Freeze Pending Review” (January 20 Memo). That memo directed the heads of Executive Departments and Agencies to temporarily postpone for 60 days from the date of the January 20 Memo the effective dates of all regulations that had been published in the **Federal Register** but had not yet taken effect.

The January 20 Memo also directs that where appropriate and as permitted by applicable law, agencies should consider a rule to delay the effective date for regulations beyond that 60-day period. In this document, EPA is taking action to further delay the effective dates for five regulations listed in the table below until May 22, 2017. EPA is taking this action to give recently arrived Agency officials the opportunity to learn more about these regulations and to decide whether they would like to conduct a substantive review of any of those regulations. If Agency officials decide to conduct a substantive review of any of those regulations, EPA will take appropriate actions to conduct such a review, including, but not limited to, issuing a document in the **Federal Register** addressing any further delay of the effective date of such regulation. If Agency officials decide not to conduct a substantive review of a regulation listed in the table below, it will become effective on May 22, 2017.

The Agency’s implementation of this action without opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(B). (The good cause exception is also referenced in section 307(d) of the Clean Air Act (CAA).) The Agency has determined that seeking public comment is impracticable, unnecessary and contrary to the public interest. The further temporary delay in effective date until May 22, 2017, is necessary to give Agency officials the opportunity to decide whether they would like to conduct a substantive review of the five regulations, consistent with the January 20 Memo. The intent of the January 20 Memo was to delay the effective dates of rules that had recently been promulgated to give the new

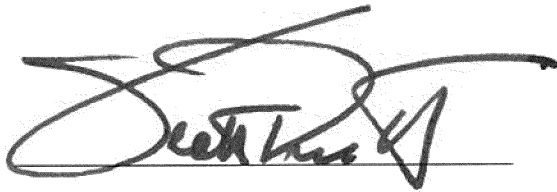
Administration time to review them. When that delay was implemented through the January 26 Document, the EPA believed 60 days would be sufficient time for incoming Agency officials to review rules recently promulgated by the EPA. However, given the length of the confirmation process for the EPA Administrator and the fact that the Agency lacks Senate-confirmed officials elsewhere, the new Administration has not had the time contemplated by the January 20 Memo for this review. Thus, the EPA is deferring the effective date for the five regulations listed in the table below for another 62 days to allow Agency officials to conduct this review. Given the imminence of the effective date, seeking prior public comment on this further temporary delay would be impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. Specifically, the Agency has been faced with circumstances beyond its control; as was the case on January 26, it is difficult to predict when the appropriate officials might assume their responsibilities. Indeed, as noted above, even today the EPA has only one Senate-confirmed official in place. Furthermore, allowing these regulations to go into effect without first deciding whether to undertake a substantive review may create public confusion. In addition, to the extent this extension is a procedural rule, it is exempt from notice and comment under 5 U.S.C. 553(b)(A), which is also referenced in CAA section 307(d).

Federal Register Citation	Title	Publication Date	Original Effective Date	New Effective Date
82 FR 2760	Addition of a Subsurface Intrusion Component to the Hazard Ranking System	1/9/17	2/8/2017	5/22/2017
81 FR 89674	Formaldehyde Emission Standards for Composite Wood Products	12/12/16	2/10/2017	5/22/2017
82 FR 5182	Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter	1/17/17	2/16/2017	5/22/2017

82 FR 952	Pesticides; Certification of Pesticide Applicators	1/4/17	3/6/2017	5/22/2017
82 FR 2230	Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/ Termination or Suspension of Permits; Procedures for Decisionmaking	1/9/17	3/10/2017	5/22/2017

For the foregoing reasons, the EPA relies on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3) to make today's action effective on March 21, 2017.

Dated: 3/14/2017



E. Scott Pruitt,
Administrator.

To: Schnare, David[schnare.david@epa.gov]
From: Starfield, Lawrence
Sent: Fri 3/3/2017 6:27:32 PM
Subject: RE: a few minutes

Sure. See you then.

Sent from my Windows Phone

From: Schnare, David
Sent: 3/3/2017 1:01 PM
To: Starfield, Lawrence
Subject: RE: a few minutes

I have a 2pm. Can we do three up here at 3402?

d.

From: Starfield, Lawrence
Sent: Friday, March 3, 2017 12:12 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: a few minutes

Great. Is there a good time between 1:45 - 3 pm? Should I meet you in 3402?

Larry

From: Schnare, David
Sent: Friday, March 03, 2017 11:38 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: Re: a few minutes

Early afternoon

Sent from my iPhone

On Mar 3, 2017, at 11:34 AM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:

Dave,

Do you have a few minutes today or early next week to talk about the Environmental Justice topic?

Larry

Larry Starfield
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
(202) 564-2440 (office)
(202) 564-8179 (direct)
Personal Phone/Ex. 6 (cell)

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

To: Schnare, David[schnare.david@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov];
Brown, Byron[brown.byron@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/7/2017 1:28:26 PM
170301 - EO Energy Independence (1200).docx
ATT00001.txt

What are are looking at now.

Executive Order—Establishing National Policy in Favor of Energy Independence, Economic Growth, and the Rule of Law

EXECUTIVE ORDER

ESTABLISHING NATIONAL POLICY IN FAVOR OF ENERGY INDEPENDENCE,
ECONOMIC GROWTH, AND THE RULE OF LAW

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.*

It is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Moreover, the prudent development of these natural resources is essential to ensuring the Nation's geopolitical security.

It is further in the national interest to ensure that the Nation's electricity is affordable, reliable, safe, secure, and clean, and is available to be produced from coal, natural gas, nuclear power, hydropower, renewables, and other domestic sources.

Accordingly, it is the policy of the United States that executive departments and agencies (Agencies) should take immediate action to review existing regulations affecting the development of domestic energy resources, and appropriately reform, repeal, or replace regulations that unduly burden United States energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.

It further is the policy of the United States that all Agencies shall take appropriate actions, to the extent permitted by law, to promote clean air and clean water for the American people, while also respecting the proper roles of the Congress and the States concerning these matters in our constitutional republic.

Agencies shall promulgate environmental regulations that comply with the law, are of greater benefit than cost when permissible, achieve environmental improvements for the American people, and are developed by transparent processes employing the best peer-reviewed science and economics.

Sec. 2. *Immediate Review of All Agency Actions Burdening the Safe, Efficient Development of United States Energy Resources.*

(a) The heads of Agencies shall review all existing regulations, orders, guidance documents, policies, and other Agency actions burdening the development or utilization of domestically produced energy resources, with particular attention to oil, natural gas, coal, and certain nuclear energy resources (collectively, "Agency Actions"); and identify Agency Actions that are not (1) mandated by law, (2) necessary for the public interest, and (3) consistent with the policy set forth in section 1 of this order.

(b) Within 45 days of the date of this order, each Agency with existing regulations, orders, guidance documents, policies, and other Agency actions that affect the development or utilization of domestically produced energy resources shall develop and submit to the Director of the Office of Management and Budget, a preliminary plan to carry out the review required by subsection (a) of this section. The preliminary plans shall also be sent to the Office of the Vice President, the Director of the National Economic Council, and the Council on Environmental Quality.

(c) Within 120 days of the date of this order, the head of each Agency shall submit a draft final report that includes specific recommendations, outlining actions that, to the extent permitted by law, can alleviate or remove policies that burden domestic energy production. This report shall be finalized no later than 180 days of the date of this order, unless an extension is agreed to by all relevant offices.

The reports shall be sent to the Office of the Vice President, the Director of the Office of Management and Budget, the Director of the National Economic Council, and the Council on Environmental Quality detailing the results of the review required by subsection (a) of this section.

The Director of the Office of Management Budget shall be responsible for leading and coordinating the policy activities related to the various agency reports within the Executive Office of the President.

(d) With respect to any such Agency Action that is not mandated by law, necessary for the public interest, and consistent with the policy set forth in section 1 of this order, the head of the relevant Agency shall take appropriate and lawful action to repeal, reform, or replace the Agency Action as soon as practicable. Agencies shall endeavor to coordinate such regulatory reforms with their activities undertaken in compliance with EO 13771.

(e) This section will not apply to an agency if an agency submits a statement to the Director of the Office of Management and Budget explaining why its Agency Actions do not burden the development of domestic energy resources. The Director of the Office of Management and Budget shall, at his discretion, issue an exemption for the relevant agency.

Sec. 3. *Rescission of Certain Energy and Climate-Related Presidential and Regulatory Actions.*

(a) The following Presidential actions are hereby revoked:

(i) Executive Order 13653 of November 6, 2013 (Preparing the United States for the Impacts of Climate Change);

(ii) The Presidential Memorandum of June 25, 2013 (Power Sector Carbon Pollution Standards)

(iii) The Presidential Memorandum of November 3, 2015 (Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment); and

(iv) The Council on Environmental Quality, Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate

Change in National Environmental Policy Act Reviews, effective August 5, 2016

(b) The following reports shall be rescinded:

(i) The Report of the Executive Office of the President of June 2013 (The President's Climate Action Plan); and

(ii) The Report of the Executive Office of the President of March 2014 (Climate Action Plan Strategy to Reduce Methane Emissions).

(c) The heads of all Agencies shall identify existing regulations, orders, guidance documents, policies, and other Agency actions related to or arising from the Presidential actions listed in subsection (a) of this section or the Plan or Strategy listed in subsection (b) of this section. To the extent permitted by law, any such regulations, orders, guidance documents, policies, and other Agency actions shall, in a lawful and appropriate manner, be repealed, reformed, or replaced consistent with the policies set forth in section 1 of this order.

Sec. 4. *Reconsideration of the EPA's "Clean Power Plan" and Related Rules and Agency Actions.*

(a) The Administrator of the EPA shall immediately take all steps necessary to review all proposed and final rules set forth in subsection (b)(i) and (b)(ii) for consistency with the policy set forth in section 1 of this order and, if appropriate, shall, as soon as practicable and consistent with Federal law, initiate proceedings to suspend, reconsider, revise, or rescind these rules. In addition, the Administration shall immediately take all steps necessary to review the proposed rule set forth in subsection (b)(iii) for consistency with the policy set forth in section 1 of this order and shall, as soon as practicable and consistent with Federal law, withdraw the proposed rule.

(b) This section applies to the following final or proposed rules:

(i) The final rule entitled, "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64661 (Oct. 23, 2015) (also known as the "Clean Power Plan");

(ii) The final rule entitled, "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64509 (Oct. 23, 2015);

(iii) The proposed rule entitled, "Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; Proposed Rule," 80 Fed. Reg. 64966 (Oct. 23, 2015).

(c) The Administrator of the EPA shall review and, if appropriate, as soon as practicable and consistent with Federal law, reconsider, revise, or rescind EPA's "Legal Memorandum Accompanying Clean Power Plan for Certain Issues," which was published in conjunction with the issuance of Clean Power Plan.

(d) The Administrator of the EPA shall promptly notify the Attorney General of this order and any subsequent actions taken by the Administrator related to the rules set forth in the subsection (b) of this section so that the Attorney General may, as appropriate, provide notice of this order and any such action to any court with jurisdiction over pending litigation related to such rules, and may, in his discretion, request that the court or courts stay the litigation or otherwise delay further litigation pending the completion of the administrative actions described in subsection (a) of this section.

(e) To the fullest extent permitted by law, and to conserve agency resources, the Administrator should cease, curtail or deprioritize, as appropriate, the implementation of the final rules set forth in subsections (b)(i) and (b)(ii) of this section, including any related guidance or policy documents, pending the Administrator's review of the rules.

Section 5. *Review of Estimates of the Social Cost of Carbon, Nitrous Oxide and Methane for Regulatory Impact Analysis*

a) In order to ensure sound regulatory decision-making, it is essential that Federal agencies use estimates of costs and benefits based on the best available science and economics in their regulatory analyses. OMB Circular A-4, issued following peer review and public comment, has been widely accepted for over a decade as embodying the best practices for conducting regulatory cost-benefit analysis. Consequently, effective immediately, when monetizing the value of changes in greenhouse gas emissions resulting from Federal regulations, agencies shall ensure that any estimates are consistent with the guidance contained in Circular A-4, including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates. To the extent that the guidance documents listed in (i) through (vi) below are not consistent with A-4, agencies should give substantial weight to the guidance in A-4.

(i) Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (February 2010),

(ii) Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (May 2013), the

(iii) Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (November 2013),

(iv) Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (July 2015),

(v) Addendum to the Technical Support Document for Social Cost of Carbon: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide (August 2016), and

(vi) Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (August 2016).

Sec. 6. *Federal Land Coal Leasing Moratorium.*

The Secretary of the Interior shall take all steps necessary and appropriate to amend or withdraw Secretarial Order 3338 dated January 15, 2016 (“Discretionary Programmatic Environmental Impact Statement (PEIS) to Modernize the Federal Coal Program”), and lift any and all moratoria on federal land coal leasing activities related to Order 3338. The Secretary shall commence federal coal leasing activities consistent with all applicable laws and regulations.

Sec. 7. *Reconsideration of Regulations Related to United States Oil and Gas Development.*

(a) The Administrator of the EPA shall review the final rule entitled, “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources,” 81 Fed. Reg. 35824 (June 3, 2016), and all other rules and guidance issued pursuant thereto, for consistency with the policy set forth in section 1 of this order and shall, if appropriate, initiate proceedings to reconsider, revise or rescind this rule, as soon as practicable and in a manner consistent with the law.

(b) The Director of the Bureau of Land Management shall review the final rule entitled, “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands,” 80 Fed. Reg. 16128 (Mar. 26, 2015), and all other rules and guidance issued pursuant thereto, for consistency with the policy set forth in section 1 of this order and shall, if appropriate, initiate proceedings to reconsider, revise or rescind this rule, as soon as practicable and in a manner consistent with the law.

(c) The Director of the National Park Service shall review the final rule entitled, “General Provisions and Non-Federal Oil and Gas Rights,” 81 Fed. Reg. 77972 (Nov. 4, 2016), and all other rules and guidance issued pursuant thereto, for consistency with the policy set forth in section 1 of this order and shall, if appropriate, initiate proceedings to reconsider, revise or rescind this rule, as soon as practicable and in a manner consistent with the law.

(d) The Director of the Fish and Wildlife Service shall review the final rule entitled, “Management of Non-Federal Oil and Gas Rights,” 81 Fed. Reg. 79948 (Nov. 14, 2016), and all other rules and guidance issued pursuant thereto, for consistency with the policy set forth in section 1 of this order and shall, if appropriate, initiate proceedings to reconsider, revise or rescind this rule, as soon as practicable and in a manner consistent with the law.

(e) With respect to any litigation before the Federal courts related to the rules set forth in subsections (a) through (d) of this section, the head of each Agency, as applicable, shall promptly notify the Attorney General of this order and any subsequent actions taken by the Agency head related to such rules so that the Attorney General may, as appropriate, provide notice of this order and any such action to the courts and may, in his discretion, request that the courts stay the litigation or otherwise delay further litigation until the completion of the administrative actions described in subsection (a) of this section.

(f) To the fullest extent of the law, and to conserve Federal resources, the head of each Agency, as applicable, should cease, curtail, or deprioritize, as appropriate, the implementation of the final rules set forth in subsection (a) through (d) of this section, pending each Agency’s review of the rule relevant rule.

Sec. 8. *General Provisions.*

- (a) Nothing in this order shall be construed to impair or otherwise affect:
- (i) the authority granted by law to a department or agency, or the head thereof; or
 - (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

To: Schnare, David[schnare.david@epa.gov]
Cc: Brown, Byron[brown.byron@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Jackson, Ryan
Sent: Mon 3/13/2017 3:15:57 PM
Subject: Re:

I will be printed Wednesday for sure? What is the timing?

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Matters/Ex. 6

On Mar 13, 2017, at 10:05 AM, Schnare, David <schnare.david@epa.gov> wrote:

We submitted it tomorrow and it is printed Wednesday

Sent from my iPhone

On Mar 13, 2017, at 10:03 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

How do we get the Fed Register notice to appear Wednesday?

It's a request from the WH. Can we simply submit it now?

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

Personal Matters/Ex. 6

To: Dravis, Samantha[dravis.samantha@epa.gov]; Schnare, David[schnare.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Flynn, Mike
Sent: Thur 3/9/2017 4:28:12 PM
Subject: FYI - Briefing papers
[APPENDIX RFS 2018 Annual Rule update for Administrator 3.7.2017.v4.pptx](#)
[RFS Update 3 7 2017.docx](#)
[Near-Term TSCA Actions, final.docx](#)
[CCR one pager 3 7 17 final.docx](#)

Samantha, Byron and David,

FYI I'm passing on briefing papers for the Administrator on three issues that Ryan asked for earlier this week. I provided to him late Tuesday - these include papers on:

- TSCA Deadlines coming up
- Renewable Fuel Standards (briefing paper has two parts -- the Word file and the PowerPoint file)
- Status of guidance on how States submit State permit plans for Agency approval under Coal Combustion Residuals (CCR) rule

Let me know if you have any questions.

Mike

Mike Flynn
Acting Deputy Administrator
U.S. Environmental Protection Agency
202-564-4711

Appendix: RFS 2018 Annual Rule

March 7, 2017

Biofuel Basics

- There are many different types of biofuels, which can vary by feedstock, chemical make-up, and other factors
- Primary examples
 - **Ethanol**: alcohol-based fuel, primarily produced from corn or sugarcane. Can be made from any sugar or starch, as well as from cellulose. Can be blended with gasoline up to certain amounts.
 - **Biodiesel**: produced from oilseed crops (e.g., soybeans) or waste oils (restaurant grease). Can be blended with petroleum-based diesel up to certain amounts.
 - **Biogas**: primary cellulosic biofuel at present. Compressed to make CNG and used in CNG vehicles.
- Clean Air Act contains specific definitions for qualifying biofuels under the program
 - Example: a biofuel feedstock must meet the definition of “renewable biomass”
- EISA established four different categories of biofuels, and establishes volume targets for each
 1. Cellulosic biofuel
 2. Biomass-based diesel
 3. Advanced biofuel
 4. Total renewable fuel

EISA's Four Fuel Categories

	Renewable Fuel Category	Example of Qualifying Renewable Fuel	Minimum Lifecycle GHG Emissions Reduction*
1.	Cellulosic	Biogas from landfills, etc. Ethanol, gasoline or diesel from corn stover, switch grass, tree residues, etc.	60%
2.	Biomass-based diesel	Biodiesel and renewable diesel from soy, canola, waste oils	50%
3.	Advanced biofuel	Ethanol from sugarcane, most biodiesel/renewable diesel	50%
4.	Renewable fuel	Ethanol from corn starch	20% (unless grandfathered)

* Defined in EISA. GHG emissions reductions compared to 2005 petroleum baseline

Deliberate - Do Not Cite, Quote, or Distribute

3

RFS Compliance basics

- Obligated Parties are refiners or importers of gasoline or diesel
- Biofuel volumes are converted into 4 different percentages that also reflect projected gasoline/diesel use. Obligated parties must demonstrate compliance with those percentage standards each year.
- Obligated Parties must obtain sufficient RINs (Renewable Identification Numbers) for each standard in order to demonstrate compliance
 - RIN = compliance “credit” for the program
 - RINs are generated by renewable fuel producers for each gallon of renewable fuel
 - Different RIN categories (D-Codes) for each type of fuel
 - RINs are commodities that are tradable
 - Obligated parties can buy gallons with RINs attached, or buy RINs on the market
 - At the end of the compliance year, obligated parties retire RINs
 - The RIN enables obligated parties to comply without physically producing, blending, or selling the renewable fuel themselves, allowing the marketplace to be more efficient
- Program also has other provisions allowing for flexibility in compliance (RIN carry over; deficit carry over)
- EPA publishes data on RIN generation and compliance online

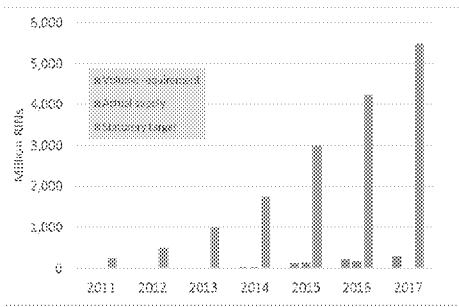
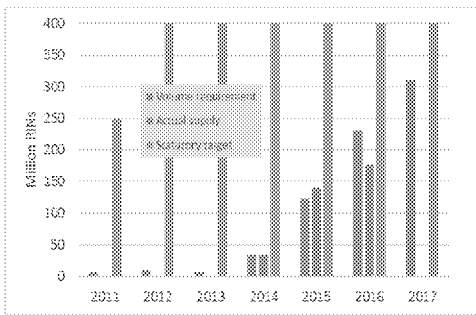
The E10 Blendwall

- E10 (gasoline with up to 10% ethanol) can lawfully be used in all vehicles and engines designed to operate on gasoline.
- 100% utilization of E10 as gasoline in the US has typically been referred to as the “blendwall”
- To blend additional ethanol beyond 100% utilization of E10 requires the manufacture and sale of higher ethanol blends like E15 and E85.
- Currently there are infrastructure and other limitations on the volume of E15 and E85 that can be consumed in the US.
 - Retail: ~3,000 retail stations currently equipped to dispense E85 and ~400 for E15
 - Vehicles: Only certified Flex Fuel Vehicles (FFVs) can lawfully use E85. There are approximately 10 -12 million FFVs on the road today but they fill on E85 <1% of the time.
 - Comparatively little E15 being sold

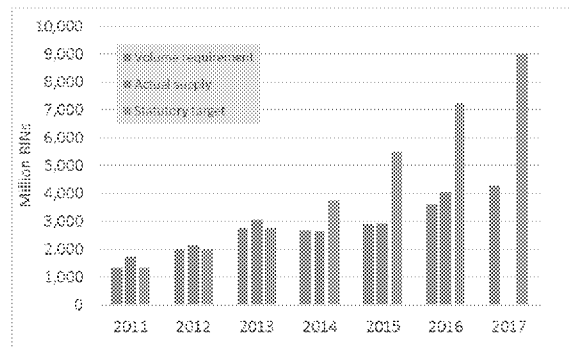
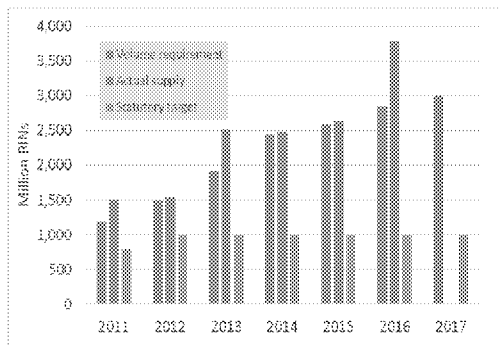
Litigation on 2014-2016 Rulemaking

- The 2014-2016 rule is being challenged by numerous parties (including ethanol producers, National Biodiesel Board, American Petroleum Institute, American Fuel and Petrochemical Manufacturers, small refiners, and other associations and companies) in the DC Circuit
- NBB challenged our interpretation and use of the cellulosic waiver authority to lower advanced volumes, arguing that EPA has limited discretion that it did not use properly
- Biofuel groups challenged EPA's interpretation and use of the general waiver authority to reduce total volumes
 - We determined that "inadequate domestic supply" was ambiguous and could include supply to vehicles
 - Litigants contend that "supply" can only mean production of biofuel, whether or not it can actually be used in vehicles
 - Litigants also contend that, apart from concerns with EPA's interpretation of supply, EPA's assessment of achievable sales of E85 was flawed because it was not based on consumption capacity of FFVs and incorrectly assessed possible price discounts that could be achieved with higher standards
- Biofuel groups also argued that carryover RINs are part of "supply," so EPA is not authorized to waive statutory volumes if they can be met with carryover RINs plus physical volume
- Obligated parties challenged the 2014-2017 BBD and 2016 cellulosic standards, and some challenged EPA's decision to refuse to consider changing the point of obligation in this rulemaking
- EPA brief was filed in mid-December, and oral argument will be April 24

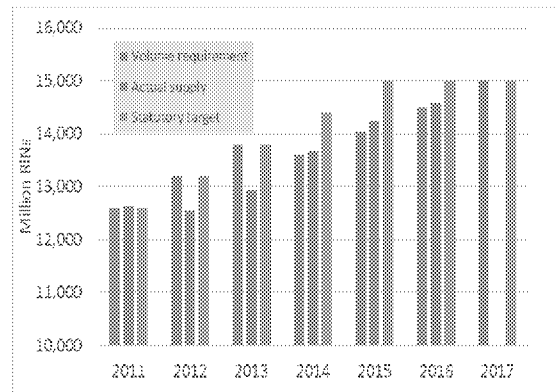
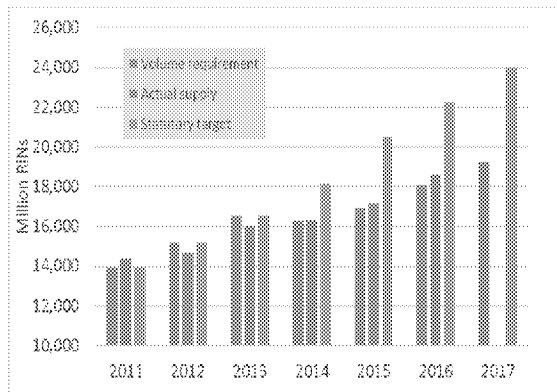
Historical Numbers: Cellulosic Biofuel



Historical Numbers: Biomass-Based Diesel & Advanced Biofuel



Historical Numbers: Total Renewable Fuel Conventional Renewable Fuel



Background and Status Update on Development of Guidance for Developing and Approving a State CCR Permit Program as Authorized by the WIIN Act of 2016

Key Points:

- The CCR Final Rule, published in the Federal Register on April 17, 2015 was promulgated under provisions in subtitle D of RCRA that did not give EPA the authority to approve State permit programs.
- The WIIN Act of 2016 changed that by providing EPA the authority to approve State permit programs.
- We have been actively working with our Regions and State partners to understand their issues and to develop appropriate guidance.
- Below is background on the rule and a short summary of our efforts to date.

The CCR Rule and State Solid Waste Management Plans

- The CCR rule was published on April 17, 2015 and became effective on 10/14/2015.
- The CCR rule imposes minimum federal requirements directly on the facilities that dispose of CCR in landfills and surface impoundments (CCR units). The rule is also self-implementing, meaning that owners and operators of CCR units must comply with the regulatory requirements without any additional action by a state or federal regulator.
- The rule was promulgated under the authority available to EPA under subtitle D of RCRA for these wastes, which does not authorize States to adopt or implement the regulations or to develop a permit program that operates “in lieu of” the Federal program. In addition, the statute did not provide EPA with any enforcement authority.
- In order to address the CCR rule implementation challenges posed by the statutory limitations, EPA strongly recommended in the Preamble to the final rule that the states adopt regulations for CCR disposal units that are at least as stringent as the federal regulations and/or the revise their Solid Waste Management Plans (SWMPs) to demonstrate how CCR disposal units will be regulated in their state.
- EPA further noted that where EPA approved the SWMP, this signaled EPA’s opinion that the state SWMP met the minimum federal criteria. The statute authorizes a state with an approved SWMP to extend regulatory compliance dates up to five years from the date of promulgation of the rule under certain circumstances. However, even with an approved SWMP, the state regulations still would not operate “in lieu of” the federal CCR regulations.
- States with SWMP approval include Kansas (10/2015), Virginia (partial approval 10/2016) and Indiana (3/2017).

WIIN Act of 2016

- Section 2301 amends Section 4005 of RCRA and provides EPA the authority to approve State permit programs and enforcement authority.
 - States may (but are not required to) develop and submit CCR permit program to EPA for approval.
 - Program does not have to be identical to CCR regulations, but must “require each coal CCR unit in the State to achieve compliance with either: (1) the Federal requirements or (2) other State criteria that are “at least as protective as” the Federal requirements.
 - Public notice and opportunity for comment required prior to EPA approval.
 - EPA may approve a program “in whole or in part”.
 - EPA has 180 days from the date the State submits the evidence EPA determines to be needed to review the program to act on the application.
 - EPA must issue permits for CCR facilities in Indian Country, and, only if specific appropriations are granted, must issue permits for CCR facilities in states without an approved program.
 - Once a permit issued under an approved State Program or by EPA is in effect, it operates “in lieu of” the federal rule. Until that time, the federal CCR regulations apply.

Current EPA Activities

- Developing Tools to Implement the New Legislation
 - Delegations Package
 - Determine Allowable State Program Flexibilities
 - Developing FAQs
 - Coordinate with ORCR Tribal Team for Indian Country Facilities
 - Develop Draft Guidance for States (followed by Rulemaking if necessary)
 - Identify Enforcement Priorities
 - Develop Outreach and Training
 - Bi-weekly calls with Regions
 - One-on-one calls with individual Regions and their States
 - Working with ASTSWMO
- Draft CCR Permit Program Guidance for States
 - Plan is to initially develop the technical and administrative approach to reviewing/approving a permit program in the form of a guidance document
 - Then elevate the decision making to determine if regulations are necessary
 - Modeling draft guidance on a number of existing sources including part 239 and part 258
 - The guidance will outline the required elements of a state CCR permit program

Schedule

- Share with Regions/Discuss with ASTSWMO (week of April 24)
- Finalize (Summer 2017)

NEAR-TERM TSCA ACTIONS

Background and Statutory Deadlines

TSCA FRAMEWORK RULES

Within the first year of implementation of the amended Toxic Substances Control Act (TSCA), EPA must finalize three procedural rules, also known as the “Framework Rules.” These rules establish the framework for clarifying which chemicals on the TSCA inventory are still active in commerce, the identification of priorities for risk evaluation, and the process for evaluating risks from existing chemicals, as required under the amended law. All three rules were proposed in mid/late-January and are currently in a 60-day public comment period, ending in mid/late-March.

1. Active/Inactive Inventory Rule – This rule requires manufacturers to notify EPA of chemicals manufactured and processed in the past 10 years. Information on which chemicals are still being manufactured and processed will inform priority chemicals for risk evaluation.
2. Prioritization Process Rule – This rule establishes the EPA’s process and criteria for identifying high-priority and low-priority chemicals for evaluation. A chemical designated as “High-Priority” must undergo evaluation. Chemicals designated as “Low-Priority” are not required to undergo further evaluation.
3. Risk Evaluation Process Rule – This rule establishes EPA’s process for evaluating the risks of high-priority chemicals. EPA identifies steps in the risk evaluation process, including publishing the scope of the assessment, assessing hazard and exposures, and characterizing and determining risks. This rule also outlines how the Agency intends to seek public input on specific chemical evaluations.

Key Deadline Issues

- Active/Inactive Inventory Rule – **Deliberative Process Privilege/Ex. 5**
 - Prioritization and Risk Evaluation – **Deliberative Process Privilege/Ex. 5**
- Deliberative Process Privilege/Ex. 5**

Expected Schedule

- **Deliberative Process Privilege/Ex. 5**

- -
 -
 -
 -
- ## **Deliberative Process Privilege/Ex. 5**

MERCURY INVENTORY

Statutory Requirement

- “Not later than April 1, 2017, and every 3 years thereafter, the Administrator shall carry out and publish in the Federal Register an inventory of mercury supply, use, and trade in the United States” (15 U.S.C. 2607(b)(10)(B))

Initial Inventory

- Basic compilation of on-hand, publicly-available data to summarize the following:
 - Supply (e.g., byproduct/waste recovery)
 - Use (e.g., use in products and manufacturing processes) and \
 - Trade (e.g., import/export)
- Includes both elemental mercury and mercury compounds
- Report provides only factual information - not an analysis of trends in supply/use/trade – as this is the initial report

Next Steps

Deliberative Process Privilege/Ex. 5

To: Schnare, David[schnare.david@epa.gov]
From: Dravis, Samantha
Sent: Mon 3/6/2017 4:08:48 PM
Subject: RE: Elevation: AFPM request to delay the RFS 2016 compliance deadline

Deliberative Process Privilege/Ex. 5

From: Schnare, David
Sent: Monday, March 6, 2017 10:53 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Subject: FW: Elevation: AFPM request to delay the RFS 2016 compliance deadline

OAR raises a time-sensitive issue that,

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

The basic information is in the attachments.

Deliberative Process Privilege/Ex. 5

Please let me know your views on this by COB.

David.

From: Dunham, Sarah
Sent: Monday, March 6, 2017 10:33 AM
To: Flynn, Mike <Flynn.Mike@epa.gov>; Schnare, David <schnare.david@epa.gov>
Cc: Connors, Sandra <Connors.Sandra@epa.gov>; Hull, George <Hull.George@epa.gov>;
Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH
<Richardson.RobinH@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: Elevation: AFPM request to delay the RFS 2016 compliance deadline

We have a new renewable fuels related question that we believe needs elevating, particularly given the recent direction related to delegation. So in addition to the fuels waivers recommended denials which we are still holding on until we get further feedback, we have a separate request from the American Fuel and Petrochemical Manufacturers (AFPM) that EPA delay the compliance deadline for the 2016 annual RFS standards (incoming request is attached). The compliance deadline (by regulation) is March 31, 2017.

Deliberative Process Privilege/Ex. 5

OAR's recommendation is

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Thank you!

To: Smith, Loren (OST)[Loren.Smith@dot.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]
Cc: Konkus, John[konkus.john@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Knapp, Kristien
Sent: Tue 3/14/2017 10:03:04 PM
Subject: RE: MTE notice

Thank you!

From: Smith, Loren (OST) [mailto:Loren.Smith@dot.gov]
Sent: Tuesday, March 14, 2017 5:54 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Knapp, Kristien <Knapp.Kristien@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: RE: MTE notice

Sorry for delay – it is attached.

Thank you Kristien!

+++

Loren Smith

U.S. Department of Transportation

loren.smith@dot.gov

202-430-2952

From: Grantham, Nancy [mailto:Grantham.Nancy@epa.gov]
Sent: Tuesday, March 14, 2017 5:43 PM
To: Knapp, Kristien
Cc: Smith, Loren (OST); Konkus, John; Grantham, Nancy
Subject: RE: MTE notice

Hi Loren,

Do we have the PDF that includes the 2 signatures?

Thank ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Knapp, Kristien

Sent: Tuesday, March 14, 2017 4:13 PM

To: Grantham, Nancy <Grantham.Nancy@epa.gov>

Subject: MTE notice

Did you ever get a pdf that was signed by Secretary Chao?

To: Schnare, David[schnare.david@epa.gov]
From: Randall, Brenda
Sent: Fri 3/3/2017 6:21:09 PM
Subject: Parking Application

Hi David,

I am just following up on your transportation needs. I am in the office on Monday at 6:00am., when you get a few minutes can you give me a call. Have a great weekend! Thanks, Brenda

To: Flynn, Mike[Flynn.Mike@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/7/2017 12:19:10 PM
Subject: Re: Elevation: AFPM request to delay the RFS 2016 compliance deadline

I'm aware. Thank you.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

On Mar 7, 2017, at 5:14 AM, Flynn, Mike <Flynn.Mike@epa.gov> wrote:

Ryan,
I wanted to give you a heads up on a new issue raised by Sarah. Will discuss with David S but wanted you to be aware.

Mike

Mike Flynn
Acting Deputy Administrator
U.S. Environmental Protection Agency

Begin forwarded message:

From: "Dunham, Sarah" <Dunham.Sarah@epa.gov>
Date: March 6, 2017 at 10:32:58 AM EST
To: "Flynn, Mike" <Flynn.Mike@epa.gov>, "Schnare, David" <schnare.david@epa.gov>
Cc: "Connors, Sandra" <Connors.Sandra@epa.gov>, "Hull, George" <Hull.George@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>
Subject: Elevation: AFPM request to delay the RFS 2016 compliance deadline

We have a new renewable fuels related question that we believe needs elevating, particularly given the recent direction related to delegation. So in addition to the fuels waivers recommended denials which we are still holding on until we get further feedback, we have a separate request from the American Fuel and Petrochemical Manufacturers (AFPM) that EPA delay the

compliance deadline for the 2016 annual RFS standards (incoming request is attached). The compliance deadline (by regulation) is March 31, 2017.

Deliberative Process Privilege/Ex. 5

OAR's recommendation is

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Thank you!

<AFPM Compliance Delay Request briefing document 3.4.17.docx>

<AFPM incoming 2016 RFS request to delay compliance 022417 final.pdf>

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Schnare, David[schnare.david@epa.gov]; Kavlock, Robert[Kavlock.Robert@epa.gov]
From: Flynn, Mike
Sent: Thur 3/9/2017 4:19:38 PM
Subject: PFOA/PFOS Paper for the Administrator
PFOA and PFOS Briefing Paper 030817.docx

Ryan,

Earlier this week I gave you several briefing papers for the Administrator that you had requested. I indicated that we needed a little more time on one paper – PFOA/PFOS – because so many offices were involved. Attached is part one on PFOA/PFOS – this paper provides a brief overview of the issue to set the stage for more information on what the Agency is doing and proposed next steps. ORD is working on this second paper with multiple offices and will provide shortly.

Mike

Mike Flynn

Acting Deputy Administrator

U.S. Environmental Protection Agency

202-564-4711

BRIEFING PAPER: BACKGROUND ON PFOA & PFOS

Bottom-Line Messages

- Perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) are two specific, man-made chemicals that belong to a larger family of chemicals called “per- and polyfluoroalkylated substances (PFAS)”
- PFAS chemicals—mostly PFOA and PFOS, but also others—have been widely used in consumer products, firefighting foams at air fields, and in industrial processes
- Recent attention has focused on sites across the country where PFOA, PFOS, and other PFAS chemicals have been detected (often in drinking water)
 - There are geographical hotspots where exposures are higher than in the general population (e.g., Parkersburg, WV; Decatur, AL; Hoosick Falls, NY)
- There is substantial concern about the effects of PFAS on public health, including increased cholesterol levels, low infant birth weights, effects on the immune system, thyroid hormone disruption, and increased risk for kidney and testicular cancer
- In 2016, EPA established non-regulatory health advisories for PFOA and PFOS in drinking water of 0.07 parts per billion (70 parts per trillion) for PFOA and PFOS
 - The health advisories identified the concentration of PFOA and PFOS in drinking water at or below which adverse health effects are not anticipated to occur over a lifetime of exposure
- Currently, EPA programs and regions are working together (and with other federal agencies) to address public health concerns by learning more about potential exposures to and toxicity of PFAS chemicals
 - The lack of evaluated, quantitative toxicity information for many PFAS chemicals makes it difficult for EPA offices and regions to make evidence-based decisions regarding potential human health risks from ongoing or future exposures

Additional Information

- Certain PFAS chemicals, including PFOA and PFOS, are no longer manufactured in the U.S. as a result of voluntary phase outs and EPA’s PFOA Stewardship Program
 - PFOA and PFOS are still produced around the globe and continue to be imported into the U.S. in consumer goods
 - As production of PFOA and PFOS decreased, manufacturers engaged in the design and production of new PFAS chemicals, and several thousand different chemical variations now exist
- Most people in the general population have been exposed to PFOA and PFOS chemicals because they have been used in many consumer products and because they do not break down in the environment
 - Scientists at the Centers for Disease Control and Prevention have found PFOA and PFOS in the blood of nearly all the people they tested (98% of 2,094 participants)
 - These studies have shown, however, that the levels of PFOA and PFOS in blood have been decreasing since companies in the U.S. voluntarily agreed to stop producing these chemicals

To: Grantham, Nancy[Grantham.Nancy@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]
Cc: Konkus, John[konkus.john@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Smith, Loren (OST)
Sent: Tue 3/14/2017 9:53:58 PM
Subject: RE: MTE notice
[CAFE-signed-joint-notice-light-duty-2017.pdf](#)

Sorry for delay – it is attached.

Thank you Kristien!

+++

Loren Smith

U.S. Department of Transportation

loren.smith@dot.gov

202-430-2952

From: Grantham, Nancy [mailto:Grantham.Nancy@epa.gov]
Sent: Tuesday, March 14, 2017 5:43 PM
To: Knapp, Kristien
Cc: Smith, Loren (OST); Konkus, John; Grantham, Nancy
Subject: RE: MTE notice

Hi Loren,

Do we have the PDF that includes the 2 signatures?

Thank ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Knapp, Kristien

Sent: Tuesday, March 14, 2017 4:13 PM

To: Grantham, Nancy <Grantham.Nancy@epa.gov>

Subject: MTE notice

Did you ever get a pdf that was signed by Secretary Chao?

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]
From: Flynn, Mike
Sent: Tue 3/7/2017 12:14:12 PM
Subject: Fwd: Elevation: AFPM request to delay the RFS 2016 compliance deadline
[AFPM Compliance Delay Request briefing document 3.4.17.docx](#)
[ATT00001.htm](#)
[AFPM incoming 2016 RFS request to delay compliance 022417 final.pdf](#)
[ATT00002.htm](#)

Ryan,
I wanted to give you a heads up on a new issue raised by Sarah. Will discuss with David S but wanted you to be aware.

Mike

Mike Flynn
Acting Deputy Administrator
U.S. Environmental Protection Agency

Begin forwarded message:

From: "Dunham, Sarah" <Dunham.Sarah@epa.gov>
Date: March 6, 2017 at 10:32:58 AM EST
To: "Flynn, Mike" <Flynn.Mike@epa.gov>, "Schnare, David" <schnare.david@epa.gov>
Cc: "Connors, Sandra" <Connors.Sandra@epa.gov>, "Hull, George" <Hull.George@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>
Subject: Elevation: AFPM request to delay the RFS 2016 compliance deadline

We have a new renewable fuels related question that we believe needs elevating, particularly given the recent direction related to delegation. So in addition to the fuels waivers recommended denials which we are still holding on until we get further feedback, we have a separate request from the American Fuel and Petrochemical Manufacturers (AFPM) that EPA delay the compliance deadline for the 2016 annual RFS standards (incoming request is attached). The compliance deadline (by regulation) is March 31, 2017.

- The attached backgrounder presents the relevant facts in detail.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

OAR's recommendation is

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Thank you!

AFPM Request for Extension of Compliance Deadline

Issue

- The compliance deadline for the 2016 Renewable Fuel Standard (RFS) is March 31, 2017.
- American Fuel and Petrochemical Manufacturers (AFPM), a trade group representing a significant number of obligated refineries under the RFS, requested a delay of the compliance deadline. The request is dated 2/24/17.
- AFPM alleges that compliance prior to a court decision on the validity of the standards would result in wasted resources and potential over-compliance, and due to a potential shortfall in cellulosic biofuel production, monetary expenditures by obligated parties.
- EPA and the Court have previously denied requests for extensions of the compliance deadline.

OAR Staff Recommendation

Deliberative Process Privilege/Ex. 5

RFS Background

- March 31, 2017 is the date by which obligated parties under the RFS must demonstrate compliance with the 2016 RFS requirements. Parties must retire “RINs” – the compliance credits under the RFS program – commensurate with their obligation under the standards that EPA sets.
- EPA set standards for RFS for 2014-2016 in a rule published in December 2015.
- The 2014-16 rule is currently being challenged by various parties, including AFPM, in the D.C. Circuit. Briefing is complete and oral argument is scheduled for April 24, 2017.
- Last year, EPA received a request for an administrative stay of the compliance deadlines for 2014, 2015, and 2016 from the Small Refinery Coalition, another party to the litigation.
 - EPA denied these requests.
- The small refinery coalition then requested an emergency stay of the 2015 and 2016 compliance deadlines from the DC Circuit.
 - EPA, American Petroleum Institute (API), National Biodiesel Board (NBB), and DuPont opposed the motion.
 - EPA argued, among other things, that if parties comply on schedule, and then the rule is remanded and obligations lessened or eliminated, that parties will be able to sell their RINs or get refunds of cellulosic waiver credits (CWCs), so will not be irreparably harmed.
 - The court denied the motion (a decision favorable to EPA).
- AFPM is challenging the 2016 cellulosic biofuel standard in the 2014-2016 litigation, but took no position on the Small Refineries’ requests for either an administrative stay or a judicial stay.

AFPM Waiver Petition

- In the rule being challenged, EPA used its waiver authority to reduce the applicable volume of cellulosic biofuel for 2016 from 4.25 billion gallons to 230 million gallons.
- AFPM submitted a petition for a supplemental waiver of the 2016 cellulosic biofuel requirement on 12/28/16.
- AFPM noted that EPA’s projected standard for cellulosic biofuel production was likely to exceed

AFPM Request for Extension of Compliance Deadline

actual production in 2016. They argued this showed an “inadequate domestic supply” justifying a waiver under CAA 211(o)(7)(A)

- EPA denied the petition on 1/17/17, based in part on our assessment that compliance with the 2016 cellulosic standard was possible based on actual cellulosic biofuel production in 2016 plus carryover RINs from over-compliance in 2015. EPA also noted the availability of cellulosic waiver credits and the ability of obligated parties to carry a RIN deficit forward for one year as other avenues for compliance.

AFPM Request for a delay of the 2016 Compliance Deadline

- On 2/24/17, AFPM requested a delay of the March 31, 2017 compliance deadline for the 2016 RFS standards until resolution of the 2014-2016 litigation.
- They claim that AFPM and EPA would “waste significant resources demonstrating compliance with the 2016 RFS on March 31, 2017.”
- AFPM intends to petition for reconsideration of EPA’s denial of their request for a supplemental 2016 cellulosic biofuel waiver.
- They also claim that several AFPM members do not have the requisite amount of cellulosic RINs to comply and will be forced to purchase CWCs. Cellulosic waiver credits are credits that can be purchased in lieu of actual cellulosic gallons, and are a requirement under the statute.
- A delay would allow the federal government to avoid issuing refunds for excess CWCs – AFPM notes that EPA is still processing refunds from the 2011 cellulosic standard that was rescinded in December 2015.
- They note that EPA has in the past delayed the 2013, 2014, and 2015 compliance deadlines.
 - But these extensions were done through rulemaking, and were based on EPA’s delay in issuing the annual standards rules, not because of pending litigation.

Relevant Information

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Possible Precedent

Deliberative Process Privilege/Ex. 5

Recommendation

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5



Richard Moskowitz
General Counsel

**American
Fuel & Petrochemical
Manufacturers**

1667 K Street, NW
Suite 700
Washington, DC
20006

202.457.0480 office
202.5528474 direct
202.457.0486 fax
Rmoskowitz@afpm.org

February 24, 2017

Ms. Sarah Dunham
Office of Air & Radiation
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Request to Delay 2016 RFS Compliance Date

The American Fuel & Petrochemical Manufacturers (AFPM) requests that the Environmental Protection Agency (EPA) postpone the date for compliance with the 2016 Renewable Fuel Standard (RFS).

AFPM members produce virtually all the refined petroleum products and petrochemicals manufactured in the United States and are obligated parties under the RFS. As you know, aspects of the 2016 RFS are the subject of litigation, including EPA's estimate of 2016 cellulosic biofuel production. AFPM members and EPA would waste significant resources demonstrating compliance with the 2016 RFS on March 31, 2017, rather than waiting to demonstrate compliance after conclusion of the litigation. In addition, several AFPM members do not have the requisite amount of cellulosic biofuel Renewable Identification Numbers (RINs) to comply with EPA's 2016 cellulosic mandate under the RFS and will be forced to purchase cellulosic waiver credits representing fuel that was never produced.

In December 2015, EPA promulgated the applicable volumetric requirements for various renewable fuels under the RFS for compliance years 2014-2016.¹ This rulemaking established the mandated volume of cellulosic biofuel for 2016 at 230 million ethanol-equivalent gallons. In promulgating the final rule, EPA exercised its waiver authority to reduce the statutorily prescribed amount of cellulosic biofuel under the RFS from 4.25 billion gallons to 230 million gallons.

Based upon EMTS data suggesting that there would be a significant cellulosic biofuel shortfall, AFPM filed a petition for a supplemental waiver on December 28, 2016.² This shortfall in cellulosic production would require many AFPM members to pay what amounts to a penalty in the form of purchasing cellulosic waiver credits from EPA for EPA's overestimate of the amount of cellulosic biofuel produced in 2016. On January 17, 2017, EPA denied AFPM's petition. AFPM intends to petition the agency for reconsideration of its denial.

¹ See 80 Fed. Reg. 77420 (December 14, 2015).

² EPA's recently issued February EMTS summary shows only 190.1 million gallons of cellulosic biofuel RINs were produced in 2016. This is well short of the 2016 RFS cellulosic biofuel standard of 230 million gallons.



AFPM Request for Delayed Compliance

February 24, 2017

Page 2 of 3

AFPM's petition for reconsideration and the litigation challenging EPA's 2016 cellulosic methodology remain pending; however, the 2016 RFS compliance reports and the requirement to purchase cellulosic waiver credits are due by March 31, 2017.³ This leaves insufficient time for EPA to address the petition for reconsideration before obligated parties must determine their compliance and deficits for 2016 and potentially purchase 2016 cellulosic waiver credits.

If EPA does not delay the 2016 compliance deadline, obligated parties will be forced to spend millions of dollars in March 2017 purchasing cellulosic waiver credits, as a result of the production of cellulosic biofuel falling far short of EPA's mandated amount. Forcing obligated parties to purchase cellulosic waiver credits for phantom fuels is a penalty tax that punishes obligated parties for a lack of production by their competitors. Such a penalty does not further the purposes of the RFS.

Further, EPA's deferral of the compliance deadline would provide an avenue for the federal government to avoid issuing refunds for the purchase of excess and unnecessary cellulosic waiver credits. In fact, we note that EPA is still trying to process refunds for credits that were purchased to comply with the 2011 cellulosic standard, following the D.C. Circuit's decision in *API v. EPA*, 706 F.3d 474 (D.C. Cir. 2013).

There is precedent for such a deferral. EPA delayed the 2013, 2014 and 2015 RFS compliance deadlines for obligated parties with no impact on either the amount of cellulosic biofuel that was produced during the affected compliance year or the incentive to produce cellulosic biofuels in future years.

Time is of the essence. Given the March 31st compliance date and the fact that the litigation and petition for reconsideration remain pending, we respectfully request that EPA expeditiously grant this request to delay the 2016 RFS compliance date. If you have any questions concerning the issues raised in this request, please contact the undersigned at (202) 552-8474.

Respectfully submitted,

Richard Moskowitz

cc: Christopher Grundler
Kevin Minoli

³ See 40 CFR § 1451(a)(1).



AFPM Request for Delayed Compliance
February 24, 2017
Page 3 of 3

To: Flynn, Mike[Flynn.Mike@epa.gov]; Reeder, John[Reeder.John@epa.gov]; Schnare, David[schnare.david@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Jackson, Ryan
Sent: Mon 3/13/2017 3:07:57 PM
Subject: 3pm meetings

Moving forward, Samantha will lead the 3pm meetings (or whenever they may be held) to prep issues for the Administrator for his dailies. Byron will help coordinate for legal (OGC and OECA) matters to raise for the Administrator's dailies.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

To: Schnare, David[schnare.david@epa.gov]
From: Vizian, Donna
Sent: Wed 3/1/2017 4:51:26 PM
Subject: Workforce Planning options
Workforce Planning options March 1 2017.docx

Here is the final I jest sent to OCFO.

To: Schnare, David[schnare.david@epa.gov]; Smith, Loren (OST)[Loren.Smith@dot.gov]; Fulton, Finch (OST)[Finch.Fulton@dot.gov]; Pugliese, Anthony (OST)[anthony.Pugliese@dot.gov]
Cc: Brooks, Phillip[Brooks.Phillip@epa.gov]
From: McCown, Brigham (OST)
Sent: Mon 3/6/2017 3:26:58 AM
Subject: Re: We might need to look into the VW settlement fund

Sorry, second note.

Deliberative Process Privilege/Ex. 5

Best,

Brigham

B. A. McCown
Consultant - Advisor to the Secretary
U.S. Department of Transportation
Office of the Secretary
West Building W92-319
1200 New Jersey Ave, S.E.
Washington, DC 20590
(202) 366-9315 (office)

Personal Phone/Ex. 6

Folks,

Attached are some talking points on the VW settlement that you may find helpful.

Important take aways from the VW deal – the \$2.7 Billion is German money being spent in the U.S.

Had our President been in office when the deal was done, we would have put a buy American element in it. It wasn't on the radar then so isn't in it now.

But, we are just starting a new case against Fiat that is nearly as large and we can put that kind of thing in there. If you have specific ideas you'd like out folks to consider, send them to me.

David Schnare

From: Smith, Loren (OST) [mailto:Loren.Smith@dot.gov]
Sent: Friday, March 3, 2017 11:19 AM
To: Schnare, David <schnare.david@epa.gov>; Fulton, Finch (OST) <Finch.Fulton@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; McCown, Brigham (OST) <brigham.mccown@dot.gov>
Subject: We might need to look into the VW settlement fund

Dave, copying my Senior WH Advisor as well as Finch and Brig.

Sent from my iPhone

Begin forwarded message:

Date: March 3, 2017 at 10:26:20 AM EST
To: "Smith, Loren (OST)" <Loren.Smith@dot.gov>
Subject: Volkswagen Clean Air Act Civil Settlement | Enforcement | US EPA

Loren - do you have a contact on the US EPA landing team?

The recent VW settlement created a \$2.7B (yes, that's BILLION) mitigation trust fund to offset the impact of VW's actions.

As the EPA's press release (<https://www.epa.gov/enforcement/volkswagen-clean-air-act-civil-settlement>) states, "Eligible mitigation actions include projects to reduce NOx from heavy duty diesel sources near population centers, such as large trucks that make deliveries and service ports, school and transit buses, and freight switching railroad locomotives. Thus, for example, eligible mitigation actions could include replacing or repowering older engines for newer engines at a rail switchyard, or could include replacing older city transit buses with new electric-powered transit city buses. Eligible mitigation actions may also include, in a more limited capacity, charging infrastructure for light duty zero emission passenger vehicles."

FHWA has issued Buy America waivers to enable CMAQ recipients to buy school buses that don't comply with Buy America requirements (e.g., <https://www.fhwa.dot.gov/construction/contracts/cmaq.cfm> and <https://www.fhwa.dot.gov/construction/contracts/cmaq160517.cfm>). However, because transit buses have pretty much been the domestic domain of FTA and we have invested significant resources into technical assistance and oversight programs to ensure that transit vehicles and their manufacturers comply with Federal requirements (ADA compliance, DBE compliance, Altoona testing compliance, and Buy America compliance), we persuaded FHWA to flex its CMAQ grant applications to FTA for administration (see <https://www.fhwa.dot.gov/construction/contracts/131211.cfm>).

It would be consistent with the President's Build American policy to have transit vehicles acquired with VW Settlement funds comply with FTA's Buy America (and other) requirements - to wit, a Canadian bus manufacturer has been informing potential buyers of this funding source - <http://www.greenpowerbus.com/greenpower-buses-eligible-for-vw-settlement-funds/> and it further the Administration's interests to ensure that vehicles bought with the settlement funds were American-made (recalling that the previous Administration imposed no Buy American requirement when it initiated the "Clash for Clunkers" program in 2009, much to the chagrin of the Big Three and the UAW - see <http://mail.ofii.org/news/absence-buy-american-provision-cash-clunkers>).

To: Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Reeder, John[Reeder.John@epa.gov]; Schnare, David[schnare.david@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Hull, George[Hull.George@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]
Cc: Lewis, Josh[Lewis.Josh@epa.gov]; Cyran, Carissa[Cyran.Carissa@epa.gov]; Fonseca, Silvina[Fonseca.Silvina@epa.gov]; Burden, Susan[Burden.Susan@epa.gov]; Hautamaki, Jared[Hautamaki.Jared@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Page, Steve[Page.Steve@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]
From: Knapp, Kristien
Sent: Tue 3/14/2017 9:40:29 PM
Subject: Signed - Appendix N
[Appendix N .pdf](#)

This afternoon, Administrator Pruitt signed a final rule titled, "Technical Correction to the National Ambient Air Quality Standards for Particulate Matter" (SAN 5881). A copy of the signature page is attached. Please call with any questions.

Thanks,

Kristien

Kristien Knapp

Special Assistant, Office of the Administrator

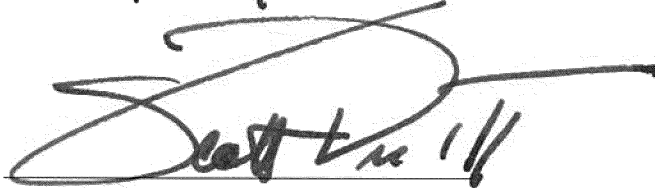
U.S. Environmental Protection Agency

(202) 564-3277

Technical Correction to the National Ambient Air Quality Standards for Particulate Matter

List of Subjects in 40 CFR Part 50

Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: 3/14/2017.


E. Scott Pruitt,
Administrator.

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Schnare, David[schnare.david@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Hull, George[Hull.George@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Konkus, John[konkus.john@epa.gov]
From: Richardson, RobinH
Sent: Mon 3/13/2017 10:41:07 PM
Subject: Flint Award Follow Up

Hi Samantha –

In follow up to our 3pm meeting today, below is an update on the status of the award and activity around coordinating the announcement. There are two key questions for consideration.

- Region 5 has the award package ready for the region's Senior Resource Official signature. It's cleared White House review and is waiting for HQ approval to sign the package. Once the package is signed the funds are awarded and announcements can be made.
- The Agency is required by statute to award the funds by Sunday, March 19, 2017.
- The plan would be to approve the region signing the award package soonest but no later than Friday, March 17, 2017.
- Meanwhile OCIR/OPA and the region are checking the level of interest of the Governor, Mayor and the Congressional Members to participate in an announcement and/or event. Based on the Administrator's and their interest we will identify possible options.

The two questions: 1) Are we ready to approve the regional Senior Resource Official to sign the package? And 2) What preferences does the Administrator have regarding the announcement and/or event (e.g., attend in person, Op/Ed, video, etc.)?

I hope this is helpful. Please let us know if you need any additional information or how we can help further.

Nancy, if I missed anything please add.

Thank you, Robin

Robin H Richardson

Principal Deputy Associate Administrator

Office of Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-3358 (desk)

703-581-5814 (cell)

richardson.robinh@epa.gov

To: Schnare, David[schnare.david@epa.gov]
From: Schwab, Justin
Sent: Wed 3/1/2017 4:46:01 PM
Subject: Re: pebble - Jeff Wood (DOJ) wants discussion next Monday

Got it. Thanks.

Sent from my iPhone

On Mar 1, 2017, at 11:45 AM, Schnare, David <schnare.david@epa.gov> wrote:

Deliberative Process/Attorney Client Privilege/Ex. 5

d.

From: Schwab, Justin
Sent: Wednesday, March 1, 2017 10:44 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: pebble - Jeff Wood (DOJ) wants discussion next Monday

David –

Jeff Wood (DOJ, acting AAG - ENRD) and I have a **standing weekly call** at 3:30 on Mondays to discuss ongoing matters.

He has asked that we **add Pebble to the agenda** for next Monday's call (3/6).

Given your interest in that matter, I thought I'd let you know in case you want to participate.

Best,

Justin

To: Kaplan, Robert[kaplan.robert@epa.gov]
Cc: Adm14Pruitt, Scott[adm14pruitt.scott@epa.gov]; Schnare, David[schnare.david@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Benton, Donald[benton.donald@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/7/2017 4:45:50 AM
Subject: Re: Requested Transmittal to OMB of the FY16 GLRI Report to Congress

Thank you, Bob.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

On Mar 6, 2017, at 4:22 PM, Kaplan, Robert <kaplan.robert@epa.gov> wrote:

Administrator Pruitt,

The purpose of this email is to request the transmittal to OMB of the FY 2016 Great Lakes Restoration Initiative Progress Report to Congress and the President. We have incorporated previous edits by EPA Headquarters.

EPA is required by the 2010 Appropriations Conference Report, 111-316, to submit a report pertaining to the Great Lakes Restoration Initiative to Congress and the President on behalf of the Great Lakes Interagency Task Force. The Conference Report directs EPA to provide detailed yearly GLRI program accomplishments and compare specific funding levels allocated for participating federal agencies from fiscal year to fiscal year. A brief memo from me as Acting Great Lakes National Program Manager is also attached which provides an overview of the Great Lakes Restoration Initiative (GLRI) progress and accomplishments through Fiscal Year 2016.

- Bob Kaplan

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Personal Phone/Ex. 6

Direct: 312-886-1499

Main: 312- 886-3000

<FY2016 Great Lakes Restoration Initiative Progress Report to Congress an....pdf>

<FY16 Great Lakes Restoration Initiative Progress.pdf>

To: Schnare, David[schnare.david@epa.gov]
From: Matthew Martini
Sent: Thur 3/16/2017 2:48:19 PM
Subject: RE: Briefing On EPA Energy & Environmental Policy

David,

Just an update, here are some of the people who will be attending the JP Morgan event. They'd love to talk policy with someone from the EPA.

Participants attending in addition to members of the JP Morgan research team:

Ab Global Growth Eq Inv Tr
BBL Capital
Capital International - US
Caxton
CMDTY Capital
Emerald Advisors Inc
Empyrean Ptnrs - Us
GSO Capital Partners - United States
Latimer Light Capital, L.p. - United States
Millennium - Avik Capital
Norges Bank - Norway
Oak Hill Advisors Lp
Pimco - United States
Pointstate
Putnam Inv - Us
Reaves Asset Management

Analysts:

Arun Jayaram, Large Cap Oil & Gas Exploration & Production, 212-622-8541, arun.jayaram@jpmorgan.com

Michael Glick, SMid Cap E&P, 212-622-9513, michael.a.glick@jpmorgan.com

Gabe Daoud Jr., SMid-Cap E&P, 212-622-0654, gabriel.j.daoudjr@jpmorgan.com

Sean Meakim, Oil Services and Equipment, 212-622-6684, sean.meakim@jpmorgan.com

Phil Gresh, Integrated Oils & Refining, 212-622-4861, phil.m.gresh@jpmorgan.com

Jeremy Tonet, Equity Energy MLPs, 212-622-4915, jeremy.b.tonet@jpmorgan.com

Tarek Hamid, US Credit Research, 212-834-5468, tarek.x.hamid@jpmorgan.com

Matt Anavy, US Credit Research, 212-834-3568, matthew.a.anavy@jpmorgan.com

Matt Martini

CRC Public Relations

mmartini@crcpublicrelations.com

703-683-5004 ext 1144

803-315-5879 (Mobile)

From: Matthew Martini

Sent: Thursday, March 16, 2017 10:18 AM

To: schnare.david@epa.gov

Subject: RE: Briefing On EPA Energy & Environmental Policy

David,

Wanted to follow-up to see if someone is available to do a briefing for them?

Thank you.

Matt Martini

CRC Public Relations

mmartini@crcpublicrelations.com

703-683-5004 ext 1144

803-315-5879 (Mobile)

From: Matthew Martini
Sent: Tuesday, March 14, 2017 12:08 PM
To: schnare.david@epa.gov
Subject: Briefing On EPA Energy & Environmental Policy

David,

JP Morgan is hosting a trip to DC for folks who are focused on energy. In particular, this group is focused on the impact of current and future U.S. Energy policy on oil and gas both domestically and internationally. They are meeting with members of Congress and committee staff to discuss these matters.

Please, let me know if someone at EPA is available to attend to provide a briefing on the direction of EPA.

Key areas of discussion:

- U.S. policy on domestic energy
- Border Adjustment Tax (BAT)
- Renewable Fuels Standards
- Environmental Policy, including Climate Change
- Foreign Trade
- Geopolitics' influence on commodity prices

They have secured a meeting space at the St. Regis hotel so they do have the ability to host meetings if necessary.

Event: J.P. Morgan Washington D.C. Energy Policy Trip

When: Monday, March 20 & Tuesday, March 21, 2017

Where: Washington, DC

Thank you,

Matt

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Brown, Byron
Sent: Mon 3/13/2017 2:04:58 PM
Subject: RE:

Samantha's shop handles FR publication issues.

From: Jackson, Ryan
Sent: Monday, March 13, 2017 10:04 AM
To: Schnare, David <schnare.david@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject:

How do we get the Fed Register notice to appear Wednesday?

It's a request from the WH. Can we simply submit it now?

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

Personal Phone/Ex. 6

To: Schnare, David[schnare.david@epa.gov]
From: Schwab, Justin
Sent: Wed 3/1/2017 4:44:58 PM
Subject: Re: pebble - Jeff Wood (DOJ) wants discussion next Monday

Ok.

Sent from my iPhone

On Mar 1, 2017, at 11:44 AM, Schnare, David <schnare.david@epa.gov> wrote:

You handle the call. I informed the Administrator about this so OW/OGC should get on his calendar so he can go over the negotiating options.

d.

From: Schwab, Justin
Sent: Wednesday, March 1, 2017 10:44 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: pebble - Jeff Wood (DOJ) wants discussion next Monday

David –

Jeff Wood (DOJ, acting AAG - ENRD) and I have a **standing weekly call** at 3:30 on Mondays to discuss ongoing matters.

He has asked that we **add Pebble to the agenda** for next Monday's call (3/6).

Given your interest in that matter, I thought I'd let you know in case you want to participate.

Best,

Justin

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]
From: Dunham, Sarah
Sent: Mon 3/6/2017 1:02:41 AM
Subject: Re: small refinery hardship petition criteria (contains CBI)

Ok, thank you. Certainly doable to pull together that briefing document (combination of some of the materials we've sent forward). An actual in person briefing may be the best way to communicate this information if there is time to schedule. But we'll try to focus the briefing material to have something ready to go at any time.

On Mar 5, 2017, at 6:48 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Thank you for this.

These waivers are going to be a matter of major interest to Pruitt.

He's had personal experience simply being from Oklahoma of small refiners looking for relief and pointing to spending considerable resources simply complying with the RFS to continue operations. Certainly getting to a point where refiners close is not something he's interested in nor any of us. With the deadline rapidly approaching, I know he will want a significant briefing or briefing paper of why some waivers were granted and some not. Given the small universe of petitions, although that's likely a long document it seems like it's doable.

We will be traveling all Monday and Tuesday. Let me know if you'd like to talk to get more information.

Thank you.

From: Dunham, Sarah
Sent: Friday, March 3, 2017 6:39 PM

To: Schnare, David <schnare.david@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>
Subject: small refinery hardship petition criteria (contains CBI)

Hi-

Sorry for the Friday evening email, but I wanted to follow-up on the RFS small refinery hardship petitions. We are still holding on the recommended denials but would like to proceed as soon as folks are comfortable with the decisions. So in support of that, I wanted to share a little more on the criteria we use in the evaluations.

Evaluating Small Refinery RFS Hardship Petitions

-- Under the RFS program, small refineries can petition for a waiver of compliance obligations. To qualify for relief, EPA must find that the refinery is subject to "disproportionate economic hardship."

-- EPA conducts an extensive analysis and evaluation of each small refinery hardship petition. Our approach has been litigated in court and we have been upheld on two different occasions.

-- Our analysis is comprehensive and not easily summarized. In brief, however, here are the key components of our evaluation to determine "disproportionate economic hardship":

1. As required by the statute, EPA considers DOE input on each petition. DOE developed a scoring matrix to help assess small refinery hardship petitions, and EPA considers that scoring as part of our own review.

2. EPA also considers other economic factors, including two key metrics: the three-year net refining margin and net income. For both of those factors, we assess an individual refinery's performance relative to the industry as a whole. We have attached a summary of past decisions (contains CBI) that shows

where various refineries have been on these two metrics.

We have issued 6 grants for the 2016 petition year, and have 5 petitions we have not yet responded to.

The compliance deadline for 2016 is March 31, 2016. Acting on these petitions as quickly as possible gives the impacted parties time to make their required compliance demonstrations.

To: Schnare, David[schnare.david@epa.gov]
From: OEI_password_notification@EPA.GOV
Sent: Wed 3/8/2017 11:00:58 AM
Subject: Urgent: Your LAN Password Expires in 14 day(s)!

Your LAN Password for network account DSchnare expires in 14 day(s). To avoid being locked out of the Agency's network, please change your password immediately.

You should update your LAN Password while in the office. Please simply press Ctrl + Alt + Del and click 'Change a password'.

Visit the Quick Reference Guide: How to Update Your LAN Password :
<http://intranet.epa.gov/nisintra/security/docs/QRG-how-to-update-lan-password.pdf>

For further assistance please contact your local help desk.

To: Schnare, David[schnare.david@epa.gov]
From: Minoli, Kevin
Sent: Tue 3/7/2017 3:04:26 AM
Subject: FR Notices

David-

Attorney Client Privilege/Ex. 5

Attorney Client Privilege/Ex. 5

Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

To: Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Cleland-Hamnett, Wendy
Sent: Mon 3/13/2017 10:07:58 PM
Subject: For Your Awareness: First TSCA Mercury Inventory Report

I want to make you aware of this item, since it's required by the TSCA amendments and has a statutory deadline of April 1. I don't expect significant interest or controversy, so I'm flagging it as "For Your Awareness", rather than as a "Hot Issue". Please let me know if this distinction is useful to you.

TSCA requires that the inventory report be published every 3 years, and that it "shall...identify any manufacturing processes or product that intentionally add mercury; and...recommend actions, including proposed revisions of Federal law or regulations to achieve further reductions in mercury use". The amendments also require that EPA finalize a reporting rule by June 22, 2018 to gather information supporting future Inventory reports.

Since the first report is required prior to any required reporting, we have based it on currently available public data only. It presents straightforward numbers for supply, use and trade of elemental mercury and mercury compounds, without data analysis. The introduction acknowledges the limitations of the data and says that proposed revisions of Federal law or regulations at this time are premature.

I expect the primary interest in the report to come from a few NGOs who follow mercury issues nationally and internationally. They will likely decry the paucity of good information but that, of course, is the reason for the required reporting rule. Members of Congress also interested in mercury supply and products (such as those who supported the Mercury Export Ban Act) may also show interest.

The report is only 10 pages. I'd be happy to forward a copy if any of you would like to look it over.

Deliberative Process Privilege/Ex. 5

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Hope, Brian
Sent: Mon 3/6/2017 3:52:11 PM
Subject: FW: OIG Report: "Fraud Controls for EPA's Contract Laboratory Program Are Adequate, but Can Be Strengthened With Formal Risk Assessment and Investigative Information Sharing"
[_epaoig_20170306-17-P-0119_cert.pdf](#)

From the Administrator's account.

From: OIG News
Sent: Monday, March 06, 2017 9:35 AM
To: Breen, Barry <Breen.Barry@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Elkins, Arthur <Elkins.Arthur@epa.gov>
Cc: Pruitt, Scott <Pruitt.Scott@epa.gov>; Bloom, David <Bloom.David@epa.gov>; Rutherford, Debbie <Rutherford.Deborah@epa.gov>; Deane, Benita <Deane.Benita@epa.gov>; Anthony, Sherri <Anthony.Sherri@epa.gov>; Grzegozewski, Nicholas <Grzegozewski.Nicholas@epa.gov>; Howard, MarkT <Howard.MarkT@epa.gov>; Trent, Bobbie <Trent.Bobbie@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Hull, George <Hull.George@epa.gov>; Valentine, Julia <Valentine.Julia@epa.gov>; Simon, Nigel <Simon.Nigel@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Cuscino, Glen <Cuscino.Glen@epa.gov>; Thornton, Kecia <Thornton.Kecia@epa.gov>; Spriggs, Gwendolyn <Spriggs.Gwendolyn@epa.gov>
Subject: OIG Report: "Fraud Controls for EPA's Contract Laboratory Program Are Adequate, but Can Be Strengthened With Formal Risk Assessment and Investigative Information Sharing"

Attached is the EPA Office of Inspector General (OIG) report, *Fraud Controls for EPA's Contract Laboratory Program Are Adequate, but Can Be Strengthened With Formal Risk Assessment and Investigative Information Sharing* (Report No. 17-P-0119). This report will be available to the public on the OIG's website at www.epa.gov/oig.



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

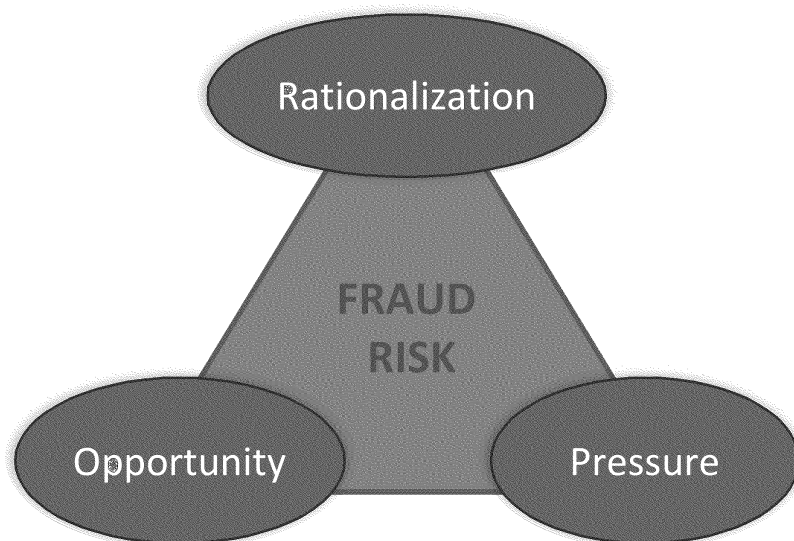


Science and Research

Fraud Controls for EPA's Contract Laboratory Program Are Adequate, but Can Be Strengthened With Formal Risk Assessment and Investigative Information Sharing

Report No. 17-P-0119

March 6, 2017



Report Contributors:

Patrick Gilbride
Erin Barnes-Weaver
Raul Adrian
Monica Brym

Abbreviations

ASB	Analytical Services Branch
CID	Criminal Investigation Division
CLP	Contract Laboratory Program
COR	Contracting Officer's Representative
EPA	U.S. Environmental Protection Agency
EXES	Electronic Data Exchange and Evaluation System
FY	Fiscal Year
GAO	U.S. Government Accountability Office
OAM	Office of Acquisition Management
OCEFT	Office of Criminal Enforcement, Forensics and Training
OECA	Office of Enforcement and Compliance Assurance
OEI	Office of Environmental Information
OI	Office of Investigations
OIG	Office of Inspector General
OLEM	Office of Land and Emergency Management
OMB	Office of Management and Budget
OSRTI	Office of Superfund Remediation and Technology Innovation
QA	Quality Assurance
QATS	Quality Assurance Technical Support
QC	Quality Control
SMO	Sample Management Office

Cover image: EPA OIG graphic depicting fraud risk.

Are you aware of fraud, waste or abuse in an EPA program?

EPA Inspector General Hotline

1200 Pennsylvania Avenue, NW (2431T)
Washington, DC 20460
(888) 546-8740
(202) 566-2599 (fax)
OIG_Hotline@epa.gov

Learn more about our [OIG Hotline](#).

EPA Office of Inspector General

1200 Pennsylvania Avenue, NW (2410T)
Washington, DC 20460
(202) 566-2391
www.epa.gov/oig

Subscribe to our [Email Updates](#)
Follow us on Twitter [@EPAoig](#)
Send us your [Project Suggestions](#)



At a Glance

Why We Did This Review

We conducted this review to determine whether the U.S. Environmental Protection Agency's (EPA's) Contract Laboratory Program (CLP) has the controls to detect or prevent fraudulent analytical services or data produced by CLP laboratories, and whether those controls provide reasonable assurance that the potential for fraud is minimized. We also sought to identify how the EPA monitors laboratory fraud cases across the agency to inform its system of controls.

The CLP is a national network of EPA-approved contract laboratories whose primary service is the provision of analytical data of known and documented quality. Since the 1980 inception of the CLP, 180 CLP labs have performed over 3.7 million analyses on samples from more than 20,900 sites, at an expense of approximately \$431.5 million.

This report addresses the following EPA goals or cross-agency strategies:

- ☐ *Protecting human health and the environment by enforcing laws and assuring compliance.*
- ☐ *Embracing EPA as a high-performing organization.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

Listing of [OIG reports](#).

Fraud Controls for EPA's Contract Laboratory Program Are Adequate, but Can Be Strengthened With Formal Risk Assessment and Investigative Information Sharing

What We Found

The CLP has demonstrated the effectiveness of four of five internal controls that provide reasonable assurance that the potential for laboratory fraud is minimized. One component—risk assessment—has not been formally documented. Rather, one CLP manager said they address fraud risks informally but on a continual basis, which results in the development of new tools and updated guidance documents. Formal risk assessment would provide the CLP assurance that its controls address risks, as well as provide a clear picture of efforts to address lab performance deficiencies.

The impacts of lab fraud include risks to human health and the undermining of EPA regulatory programs.

Policies for EPA investigative offices do not require them to share information with program offices, or explain how or why lab fraud occurred. According to investigative units, there are additional reasons as to why they do not share information: a small caseload of lab fraud for them to data-mine trends; the inability to share sensitive information until a case closes; and resource limitations. Stakeholders we interviewed agreed with the merit of having investigative offices share relevant aspects of lab fraud findings, including methods and techniques used to commit the fraud. Stakeholders also agreed that investigative offices should share information to help program and regional offices strengthen and update their internal control systems for preventing and detecting lab fraud.

Recommendations and Planned Agency Corrective Actions

We recommend that the Assistant Administrator for the Office of Land and Emergency Management (OLEM) conduct and document a formal risk assessment of the CLP to determine whether additional internal controls are needed to mitigate detected risks. We also recommend that the Office of Enforcement and Compliance Assurance (OECA), and the Office of Inspector General (OIG), require investigative units to share pertinent information from laboratory fraud findings with relevant program and regional offices. Recommendations for OLEM and OECA are agreed-to with corrective actions pending. The OIG completed its corrective action.

Noteworthy Achievements

OLEM developed an electronic laboratory data validation package—the Electronic Data Exchange and Evaluation System (EXES)—that is being made available to other agency programs via pilot implementations. A new version of EXES is in the works, which will incorporate added controls based on a current CLP lab fraud case. This demonstrates OLEM's view of EXES as a dynamic system that will be periodically updated to reflect changes in the program.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

March 6, 2017

MEMORANDUM

SUBJECT: Fraud Controls for EPA's Contract Laboratory Program Are Adequate, but Can Be Strengthened With Formal Risk Assessment and Investigative Information Sharing Report No. 17-P-0119

FROM: Charles J. Sheehan, Deputy Inspector General

A handwritten signature in cursive script that reads "Charles J. Sheehan".

TO: Barry Breen, Acting Assistant Administrator
Office of Land and Emergency Management

Lawrence Starfield, Acting Assistant Administrator
Office of Enforcement and Compliance Assurance

Arthur A. Elkins Jr., Inspector General

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this evaluation was OPE-FY16-0022. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

In accordance with EPA Manual 2750, your offices provided planned corrective actions in response to our recommendations. All recommendations are considered resolved. You are not required to provide a written response to this final report because you provided agreed-to corrective actions and planned completion dates for the report recommendations. Should you choose to provide a final response, we will post your response on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

Table of Contents

Chapters

1	Introduction	1
	Purpose	1
	Background.....	1
	Responsible Offices	7
	Noteworthy Achievements	7
	Scope and Methodology	7
2	CLP's Internal Control System Addresses Four of Five Components and Should Formally Assess Program Risks	10
	CLP's Internal Control System Meets Most of the Principles for Effective Internal Controls	10
	Federal Guidance and EPA Policy Require Risk Assessment.....	12
	Conclusion	13
	Recommendation.....	13
	Agency Response and OIG Evaluation	13
3	Investigative Units Should Formally Share Information From Lab Fraud Investigations With Affected Organizations	14
	No Formal Requirement to Share Information	14
	Few Lab Fraud Cases, Resource Limitations and Sensitive Information Limit Information Sharing.....	16
	Stakeholders Agree on the Need for Information Concerning Lab Fraud Methods/Techniques.....	16
	Conclusion	19
	Recommendations	19
	Agency Response and OIG Evaluation	19
	Status of Recommendations and Potential Monetary Benefits	20

Appendices

A	Office of Land and Emergency Management Response to Draft Report.....	21
B	Office of Enforcement and Compliance Assurance Response to Draft Report	25
C	Office of Inspector General Response to Draft Report	27
D	Distribution	28

Chapter 1

Introduction

Purpose

We conducted this review to determine whether the U.S. Environmental Protection Agency's (EPA's) Contract Laboratory Program (CLP) has the controls to detect or prevent fraudulent analytical services or data produced by CLP laboratories, and whether those controls provide reasonable assurance that the potential for fraud is minimized. We also sought to identify how the EPA monitors laboratory fraud cases across the agency to inform its system of controls.

Background

Contract Laboratory Program

The CLP is located within the EPA's Office of Land and Emergency Management (OLEM). The CLP is a national network of EPA-approved contract laboratories whose primary service is the provision of analytical data of known and documented quality to support Superfund site decisions. All analytical services are performed by EPA-approved contract laboratories who meet stringent requirements and standards in order to be a part of the CLP. The reliability and accuracy of CLP lab data is important for monitoring environmental and public health issues.

Since the 1980 inception of the CLP, 180 CLP labs have performed over 3.7 million analyses from more than 20,900 sites, at an expense of approximately \$431.5 million.

The Analytical Services Branch (ASB) within OLEM's Office of Superfund Remediation and Technology Innovation (OSRTI) manages and supports the CLP. There are 17 participant laboratories in the CLP (as of April 2016). The EPA has a four-tier strategy for acquiring laboratory analytical services for Superfund site sample analyses.¹

- | | |
|--------|---|
| Tier 1 | EPA regional and state laboratories. |
| Tier 2 | CLP and other national analytical services contracts. |
| Tier 3 | Region-specific analytical services contracts. |
| Tier 4 | Analytical services interagency agreements and regional field contracts/subcontracts. |

¹ In March 1998, the Field and Analytical Services Teaming Advisory Committee (comprised of headquarters and regional Superfund program managers) was convened to promote coordination, enhance customer service and improve the quality assurance program with an emphasis on field activities. The committee recommended using a decision tree for selecting laboratory analytical service providers in order of preference, based on evaluating available analytical sources and considering the following parameters: quality, timeliness, cost, efficiency/availability (on-board resources), and potential vulnerabilities.

In general, there is increased cost for analyses and quality reviews when using a higher tier. Tiers 1 and 2 are considered the most preferred; Tier 4 the least preferred.

Quality Assurance/Quality Control Processes

The quality assurance (QA) process consists of management review and oversight at the three stages of the environmental data collection: planning, implementation and completion. This process is intended to ensure that the data provided are of known and documented quality. The quality control (QC) process includes those activities required during data collection to produce data suitable for decision-making. Each contract lab has a Quality Management Plan and a Quality Assurance Project Plan. Some labs combine these two documents into one. Each lab must also include the QA/QC activities designed to achieve the data quality requirements in the contract.

Additionally, each CLP analytical method, identified by its respective statement of work, has a corresponding set of guidelines (called the National Functional Guidelines) for the review and evaluation of the data. The National Functional Guidelines are intended to assist in the technical review of analytical data generated by the respective CLP statement of work. The National Functional Guidelines are not intended to be used alone in determining the ultimate usability of the data; rather, the guidelines are intended to aid in the formal data review process, along with other sources of guidance, information and professional judgment.

Laboratories are used to analyze soil, water and other media to determine their chemical composition, to assess whether such chemicals pose human health risks, and to determine whether such media are contaminated and in need of remedial treatment. In light of this role, maintenance of the integrity of laboratory sample tests, results and reports is critical for providing communities accurate information about their environment and potential health risks.

The ASB and EPA regions conduct primary lab performance monitoring activities to ensure that contract labs produce appropriate, quality data. Monitoring activities include the following: on-site lab evaluations, electronic data audits, data package audits, and lab evaluations through the use of blind performance evaluation samples. Additionally, “proficiency testing” audits are used to evaluate a laboratory’s ability to identify and quantify target analytes in performance evaluation samples provided by the EPA. The agency then uses the results to assess and verify a CLP laboratory’s continuing ability to produce acceptable analytical data in accordance with contractual requirements. CLP laboratories analyze proficiency testing audit samples several times per year under direction from the ASB. The CLP laboratory is not informed of either the analytes or sample concentrations.

Quality staff in the Office of Environmental Information (OEI) are responsible for issuing agencywide QA/QC policies and procedures. Quality staff have liaisons in every EPA program office and region, although titles may vary by location (e.g., QA Managers, Directors or Coordinators).

CLP Key Entities

Personnel from all 10 EPA regions play a vital role in CLP activities as the primary users of the CLP and as a key part of analytical program management. The regional CLP Contracting Officer's Representative (COR) serves as the primary coordinator for CLP activities within each region; provides feedback on data quality, usability and CLP laboratory performance to ASB; and contacts the laboratory if there are questions or issues that arise during data validation. The regional CLP COR leads on-site laboratory audits and may visit the CLP laboratory if there are serious performance problems.

The Office of Acquisition Management (OAM) is responsible for all contracting-related activities. OAM's Laboratory Analysis Service Center manages CLP contracts. OAM's Contracting Officer is the only person with the authority to enter into, administer and terminate contracts. The Contracting Officer has the authority to approve CLP laboratories exceeding their monthly capacity and place CLP laboratories on "suspension of work" status.

As noted earlier, CLP labs fall under Tier 2 in the EPA's decision tree when selecting analytical service providers. CLP labs are supported by two support contracts: the Sample Management Office (SMO) contract, and the Quality Assurance Technical Support (QATS) contract.

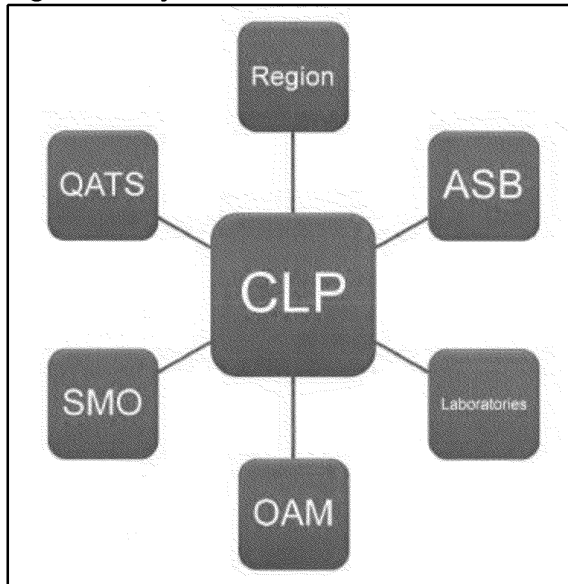
- **SMO**—The contractor-operated SMO provides management, operations and administrative support to the CLP. The SMO receives regional analytical requests, coordinates and schedules sample analyses, and tracks sample shipments. The SMO also receives and checks data for completeness and compliance, performs automated data assessment, processes laboratory invoices, and maintains a repository of sampling records and program data. The SMO's online portal offers CLP users one central location for available tools that support the CLP.
- **QATS**—This is the CLP support contractor directed and tasked by the ASB on behalf of OAM. The QATS provides QA and audit support, as well as technical expertise to assist in evaluating CLP data quality. The primary objective of QATS is to provide a data package and electronic, on-site and special investigative audit² support; develop,

² The QATS "special investigative audits" are small, targeted and focused audits of particular data from multiple sample delivery groups. These investigative audits are different from the lab fraud investigations we describe in Chapter 3.

maintain, distribute and scope proficiency testing samples; and provide technical feedback to ASB on required CLP deliverables and data quality. The ASB's QATS contracting officer's representative schedules on-site audits, initiates routing and special investigative audits, oversees the proficiency testing audit program, and gives final approval to all reports produced by QATS in support of the CLP.

Key entities in the CLP are shown in Figure 1.

Figure 1: Major entities in the CLP



Source: OLEM-OSRTI-ASB presentation to the EPA's Office of Inspector General (OIG) on 06/22/16.

CLP Resources

Table 1 presents the headquarters-level CLP budget and full-time equivalent information for fiscal years (FYs) 2005, 2010 and 2015.

According to data provided by the ASB, the budget for the CLP has decreased by over 16 percent from FY 2005 levels, and a near 24-percent decrease from FYs 2010 through 2015. Staff have decreased 36 percent from FY 2005 levels.

Table 1: Headquarters CLP resources

	FY 05	FY 10	FY 15
Cost of CLP Lab Contracts	9,723,855	10,343,788	6,237,383
Cost of Blanket Purchase Agreements	0	670,425	367,360
Subtotals	9,723,855	11,014,213	6,604,743
Cost of CLP support contracts:			
QATS	3,484,469	3,754,715	4,217,841
SMO	10,703,329	11,519,629	9,182,590
Subtotals	14,187,798	15,274,344	13,400,431
Grand Total	23,911,653	26,288,557	20,005,174
Total Full-Time Equivalents	--	7.3	6.4

Notes: Data for Blanket Purchase Agreements in FY 2005 were not readily available. FY 2005 full-time equivalent data were also unavailable.

Source: OIG analysis of CLP data.

Lab Fraud Allegations

The ASB defines inappropriate laboratory practices as “a technical unjustified omission, manipulation, or alteration of data that bypasses the required QC parameters, making the results appear acceptable.” Lab fraud investigations focus on the manipulation of data or equipment, and the falsification of analytical and quality assurance results, where failed methods and contractual requirements are made to appear acceptable. Fraud can involve the backdating of test data, manipulating test samples, or not performing analysis in accordance with established methods among other things.

Lab fraud allegations are investigated either independently or jointly by the EPA OIG’s Office of Investigations (OI); and/or the agency’s Office of Enforcement and Compliance Assurance (OECA), Office of Criminal Enforcement, Forensics and Training (OCEFT), Criminal Investigation

Division (CID), according to statutory authorities (see box) of each office³ and the terms of an OIG/OECA 2006 Memorandum of Understanding. The EPA’s contract labs are at potentially high-risk for fraud because profits are based on the volume of analytical work produced.

Primary investigative responsibilities

- ☐ **OIG/OI:** Fraud, waste and abuse in EPA programs or operations.
- ☐ **OCEFT/CID:** Criminal violations of federal environmental laws.

³ The Inspector General Act of 1978, as amended, gives OIG Special Agents law enforcement authority to conduct investigations relating to the programs and operations of the EPA. Law enforcement authority is granted to OCEFT/CID Special Agents by 18 U.S.C. § 3063.

Internal Control Standards

The U.S. Government Accountability Office (GAO) defines internal control in the following manner:

[A] process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved. Internal control comprises the plans, methods, policies and procedures used to fulfill the mission, strategic plan, goals and objectives of the entity. Internal control is not one event, but a series of actions that occur throughout an entity's operations. Management is responsible for an effective internal control system. As part of this responsibility, management sets the entity's objectives, implements controls, and evaluates the internal control system.⁴

Internal control has five components:

1. **Control Environment.** The foundation for an internal control system. The control environment provides the discipline and structure to help an entity achieve objectives.
2. **Risk Assessment.** Assesses the risks facing the entity as it seeks to achieve its objectives. This assessment provides the basis for developing appropriate risk responses.
3. **Control Activities.** Actions that management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes the entity's information system.
4. **Information and Communication.** Quality information that management and personnel communicate and use to support the internal control system.
5. **Monitoring.** Activities that management establishes and operates to assess the quality of performance over time, and to promptly resolve audit findings and other reviews.

GAO notes that 17 principles support the effective design, implementation and operation of the associated components, and represent the requirements necessary to establish an effective internal control system.

Office of Management and Budget (OMB) Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control* (July 2016), defines obligations for risk management and internal control in federal agencies. EPA Order 1000.24 CHG 2, "Management's Responsibility for Internal Control,"

⁴ GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.

requires all EPA organizations to establish and maintain internal controls to achieve the objectives of effective and efficient program operations, including evaluating internal controls on an on-going basis and taking prompt actions to correct any vulnerabilities identified.

Responsible Offices

The CLP is administered by the Analytical Services Branch within the Office of Land and Emergency Management, Office of Superfund Remediation and Technology Innovation. Allegations of fraudulent laboratory data and analysis are handled by the Criminal Investigation Division within the Office of Enforcement and Compliance Assurance, Office of Criminal Enforcement, Forensics and Training; as well as by the OIG's Office of Investigations.

Noteworthy Achievements

The ASB developed an electronic data validation package—the Electronic Data Exchange and Evaluation System (EXES)—which assesses data within 24 to 48 hours after receipt. The ASB is now making EXES available to other agency programs (e.g., the Great Lakes program) via pilot implementations. A new version of EXES is in the works and will incorporate added controls based on the ASB's experience with a current CLP lab fraud case. The new version of EXES demonstrates the ASB's view of EXES as a dynamic system periodically updated to reflect changes in the program.

Scope and Methodology

We conducted our performance audit from April to November 2016. With the exception described below, our work was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Two entities within the EPA are responsible for investigating lab fraud: OCEFT/CID and OIG/OI. To address our objectives, we were required to obtain information and interview employees in both OCEFT/CID and OIG/OI.

Because the staff that conducted this review and the OIG/OI fall structurally within the OIG, there could be the perception of a lack of independence. To address the issue of independence, we developed and adhered to the same procedures to obtain and review information and conduct interviews with both offices. We also adhered to the OIG's quality assurance procedures. We believe these actions mitigate and provide adequate safeguards that reflect our independence.

We analyzed numerous documents pertaining to the CLP,⁵ QA, laboratory fraud and internal controls, including policies, procedures and guidance documents.

In addition to document reviews, and to address our first objective, we interviewed key staff and managers responsible for CLP program implementation, oversight and quality assurance in ASB, OEI, and OAM. We also interviewed all 10 EPA regional CLP CORs (users of the CLP). We developed an internal control checklist to assist us in assessing whether controls we identified within the CLP provide reasonable assurance that the potential for fraud is minimized. We used documentary and testimonial evidence to validate implementation of controls and whether controls were understood across CLP program managers, implementers and users. Our conclusions on the adequacy of CLP's controls do not include an evaluation of the effectiveness of the controls.

To address our second objective we interviewed EPA investigative staff and managers within OIG/OI and OCEFT/CID. We interviewed the OIG's Deputy Counsel on the terms of the 2006 Memorandum of Understanding between the two offices. We also interviewed the EPA's Scientific Integrity Official to understand her role in addressing laboratory fraud as it relates to instances of research misconduct.⁶

Prior Audit Reports

Three prior reports relate to our review on laboratory fraud or managing fraud risks (though none specifically on the CLP):

- **A 2006 EPA OIG report.**⁷ The EPA OIG conducted the review to identify vulnerabilities in the drinking water sample analysis process and promising techniques to improve laboratory integrity. The EPA OIG found hundreds of vulnerabilities not addressed by the EPA's process—vulnerabilities that could compromise the integrity of the analysis process and the quality of data produced. The EPA OIG included appendices that listed vulnerabilities identified by error type and severity (see image on next page), and promising techniques based on a literature search. The EPA OIG made 10 recommendations, all of which the EPA completed.

⁵ We did not review other Superfund contract programs, such as those that are a part of the Superfund Technical Assessment and Response Team, Emergency and Rapid Response Services, or Remedial Action Contracts; rather, we focused solely on the CLP.

⁶ The EPA's Scientific Integrity Official does not investigate allegations of laboratory fraud. Instead, she focuses on research falsification, fabrication and plagiarism. She does not have a role in investigating laboratory fraud allegations. If she does receive any allegations of fraud, she said she refers them to the OIG.

⁷ EPA OIG, *Promising Techniques Identified to Improve Drinking Water Laboratory Integrity and Reduce Public Health Risks*, Report No. 2006-P-00036, September 21, 2006.

Vulnerabilities Identified by EPA Team

Sequenced based on the 13 steps in the drinking water sample analysis process (see Figure 2.1) and ordered within each step from most to least severe.

Error Type: U = Unintentional
I = Intentional
B = Both

Severity Rating: 5 = Most Severe
1 = Least Severe

Description of Vulnerability	Error Type	Severity Rating
a) Sample Collection		
• Sample is mislabeled	B	4
• Sample not preserved/or no dechlorinating agent/adulteration of sample	B	4
b) Sample Tracking and Recording		
• Holding time/temp. exceeded	B	4
c) Adherence to Standard Operating Procedures (SOPs) for Analytical Methods		
• Adherence to SOP	B	4
• QA manager/lab mgmt. not knowledgeable about approved methodology	B	4
• Untrained/inexperienced analysts	B	4
d) Preparation of Samples and Standard Solutions		
• Incorrect preparations/inappropriate standards (i.e., no traceability; contaminated/expired)	B	4
e) Instrument Performance		
• Instrument response/sensitivity-needs documentation	B	4
f) Instrument Maintenance		
• Analyst/QA officer doesn't understand repair needs	U	4
• No repairs-maintenance log maintenance	U	4
• Repaired incorrectly	U	4
g) Instrument Calibration		
• Calibration curve incorrect-data biased high or low	B	4
• Calibration verification not performed	I	4
• Out of date reference materials	B	3
h) Lab Technician Performance		
• Trained analysts can falsify data	I	5
i) Adherence to Quality Assurance/Quality Control (QA/QC) Plan		
• Analysts can falsify/not performing QA/QC data	I	5
j) Data Validation and Verification		
• Not flagging data outside of acceptance criteria	I	5
• Selection of inappropriate QC acceptance criteria	I	4

Image from EPA OIG Report No. 2006-P-00036, September 21, 2006.

- **A 2014 EPA OIG report.**⁸ The EPA OIG reviewed the due diligence process, which included the procedures used by the EPA, other federal agencies and states to manage the communication of, and appropriate action on, laboratory data determined to be fraudulent.

The EPA OIG found that the EPA lacked a due diligence process for potential fraudulent environmental data. The agency had three policies and procedures that addressed how to respond to instances of fraudulent data, but they were out of date or unimplemented when the report was issued. The OIG made six recommendations, all of which were agreed to and will be completed by March 2017.

- **A 2015 GAO report.**⁹ GAO reported on the importance of evaluating outcomes using a risk-based approach and adapting activities to improve fraud risk management. GAO said to collect and analyze data from reporting mechanisms and instances of detected fraud for real-time monitoring of fraud trends; and to use the results of monitoring, evaluations and investigations to improve fraud prevention, detection and response.

⁸ EPA OIG, *EPA Has Not Implemented Adequate Management Procedures to Address Potential Fraudulent Environmental Data*, Report No. 14-P-0270, May 29, 2014.

⁹ GAO, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP, July 28, 2015.

Chapter 2

CLP's Internal Control System Addresses Four of Five Components and Should Formally Assess Program Risks

The CLP has a system of controls in place that provides reasonable assurance that the potential for fraud is minimized. Based on our analysis, the CLP has sufficiently demonstrated the effectiveness of four of five internal controls, whereas one element—risk assessment—has not been formally documented. Rather, one CLP manager said they address risk assessment informally but on a continual basis, which results in the development of new tools and updated guidance documents that address any potential risks identified.

Federal standards and EPA Order 1000.24 CHG 2 require that federal entities conduct risk assessments and emphasize the responsibility of government managers in managing risk. A formal risk assessment would provide the program with assurance that its controls address risks, help determine whether controls are implemented and operating effectively, and provide a picture (to regional CLP leads and others) of efforts the program undertakes to address performance deficiencies by CLP labs.

CLP's Internal Control System Meets Most of the Principles for Effective Internal Controls

We reviewed the CLP's system of internal controls and assessed whether the system met the intent of GAO internal control principles.

Table 2 summarizes our assessment and illustrates that the CLP has controls to detect or prevent fraudulent analytical services; and that, with one exception, those controls provide reasonable—though not absolute—assurance that the potential for fraud is minimized.

OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control* (July 2016), notes that no matter how well designed, implemented or operated, an internal control system cannot provide absolute assurance that all of an organization's objectives are met. Factors outside the control or influence of management can affect the entity's ability to achieve all of its objectives—factors that could be identified through formal risk assessment.

Table 2: Summary of CLP controls that meet GAO internal control principles

Internal control components and principles	Met	Partially met	Not met
<i>Control Environment</i>			
1. The oversight body and management should demonstrate a commitment to integrity and ethical values.	●		
2. The oversight body should oversee the entity's internal control system.	●		
3. Management should establish an organizational structure, assign responsibilities, and delegate authority to achieve the entity's objectives.	●		
4. Management should demonstrate a commitment to recruit, develop and retain competent individuals.	●		
5. Management should evaluate performance and hold individuals accountable for their internal control responsibilities.	●		
<i>Risk Assessment</i>			
6. Management should define objectives clearly to enable the identification of risks and define risk tolerances.		●	
7. Management should identify, analyze and respond to risks related to achieving the defined objectives.		●	
8. Management should consider the potential for fraud when identifying, analyzing and responding to risks.		●	
9. Management should identify, analyze and respond to significant changes that could impact the internal control system.		●	
<i>Control Activities</i>			
10. Management should design control activities to achieve objectives and respond to risks.	●		
11. Management should design the entity's information system and related control activities to achieve objectives and respond to risks.	●		
12. Management should implement control activities through policies.	●		
<i>Information and Communication</i>			
13. Management should use quality information to achieve the entity's objectives.	●		
14. Management should internally communicate the necessary quality information to achieve the entity's objectives.	●		
15. Management should externally communicate the necessary quality information to achieve the entity's objectives.	●		
<i>Monitoring</i>			
16. Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.	●		
17. Management should remediate identified internal control deficiencies on a timely basis.	●		
Totals	13	4	0

Source: OIG analysis based on interviews and document reviews.

Federal Guidance and EPA Policy Require Risk Assessment

OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, requires that federal programs conduct and document a risk assessment¹⁰ based on GAO's *Standards for Internal Control in the Federal Government*. The aim of the assessment is to identify the major risks facing the entity as it seeks to achieve its objectives. This assessment provides the basis for developing appropriate risk responses.

A precondition to risk assessment is the establishment of clear, consistent agency goals and objectives at both the entity and activity levels. Internal control should provide for an assessment of the risks the agency faces from both internal and external sources.

EPA Order 1000.24 CHG 2, *Management's Responsibility for Internal Control* (July 18, 2008), states that in accordance with GAO standards, a risk assessment is the identification and analysis of relevant risk associated with achieving the agency's mission. The EPA order further states that program managers should identify internal and external risks that may prevent the organization from efficiently and effectively meeting its objectives.

In discussing fraud risk, the GAO standards state that management consider the following factors:

- ❑ **Incentive/pressure.** Management or other personnel have an incentive or are under pressure, which provides a motive to commit fraud.
- ❑ **Opportunity.** Circumstances exist, such as the absence of controls, ineffective controls, or the ability of management to override controls, and this provides an opportunity to commit fraud.
- ❑ **Attitude/rationalization.** Individuals involved are able to rationalize committing fraud (i.e., possess an attitude, character or ethical values that allow them to knowingly and intentionally commit a dishonest act).

Because the CLP operates in an environment characterized by high volume and quick turnaround analysis requests, the CLP should consider the above factors when determining the types of laboratory fraud risks the program faces. The CLP should formulate an approach for risk management based on its mission to provide data of known and documented quality, and decide on the internal controls required to mitigate identified risks. Additionally, CLP program managers should incorporate regional CLP leads into any risk assessment approach since EPA regions are data end users.

¹⁰ The OMB circular refers to this as a "risk profile."

One CLP manager stated that although they try to identify program risks on a continual basis, they have not conducted or documented a formal risk assessment process. The manager cited their recent updates to the EXES electronic data validation program, where they incorporated information obtained from an ongoing laboratory fraud investigation (in addition to ongoing updates to the *CLP Roles and Responsibilities Guidance Document*), as examples of their continued vigilance. We directed CLP program managers to appropriate sources containing information on how to conduct a risk assessment, including OMB Circular A-123 (July 2016), the GAO Internal Control Management and Evaluation Tool (August 2001), and other materials developed internally within the agency.

Conclusion

Our analysis indicates that the CLP's system of internal controls provides reasonable assurance that the potential for fraud is minimized. Even though the CLP's system of controls has been informed by the program's substantial history and experience in the field of laboratory analytical services, as well as its demonstrated willingness to continually improve and update the program, the CLP would benefit from a structured risk assessment process that reaffirms the strength of the controls already in place and, possibly, uncovers any gaps in the system.

Recommendation

We recommend that the Assistant Administrator for Land and Emergency Management:

1. Conduct and document a formal risk assessment of the EPA's Contract Laboratory Program to determine the adequacy of internal controls currently in place, and determine whether any additional controls are needed to mitigate detected risks.

Agency Response and OIG Evaluation

OLEM agreed with our recommendation and provided a planned completion date. Recommendation 1 is considered resolved with corrective actions pending. OLEM plans to conduct and document a formal risk assessment of the CLP by the fourth quarter of FY 2017. Appendix A contains OLEM's full response to our official draft report.

OLEM also provided technical comments, which we considered and included in Appendix A.

Chapter 3

Investigative Units Should Formally Share Information From Lab Fraud Investigations With Affected Organizations

We found that while Special Agents handling lab fraud cases share information with affected offices on an informal, ad hoc basis, investigative units do not have a formal, regular process for sharing relevant information from lab fraud investigations with other program and regional offices whose responsibilities include laboratory analytical services/data. GAO's 2015 fraud risk framework¹¹ recommends that agencies collect and analyze data from reporting mechanisms and instances of detected fraud for real-time monitoring of fraud trends, and use the results of monitoring, evaluations and investigations to improve fraud prevention, detection and response.

The EPA has various mechanisms to report allegations of laboratory fraud from program and regional staff to OIG/OI and OCEFT/CID (as well as the agency's Scientific Integrity Official). However, investigative office policies do not address or require formal information-sharing with EPA program offices and regions that could benefit from information concerning how and why fraud occurred.

According to the two investigative units, there are additional reasons as to why they do not share information: the lab fraud caseload is too small for them to data-mine for trends or lessons learned; the inability to share sensitive case information outside of the affected program; and resource limitations in both offices. As a result, program and regional offices with laboratory-related responsibilities do not always receive the information they need to strengthen their internal controls based on lab fraud findings.

No Formal Requirement to Share Information

OIG/OI and OCEFT/CID policies include guidance on coordinating with one another. However, the policies do not address sharing the root cause analyses about how or why fraud occurred with program and regional offices whose responsibilities include laboratory analytical services/data. There is no formal, consistent process in place for debriefing program offices; rather, each investigative office does so informally.

- **OCEFT/CID** updated its policy, *Investigative Process* (2015), OCEFT-I-002R1, in response to a 2014 OIG report recommendation to “develop guidelines outlining response steps when fraudulent laboratory data is

¹¹ See our summary of this report in Chapter 1.

discovered in ongoing criminal investigations,” but this does not address sharing information with other offices as a routine practice. However, the CID policy does provide guidance for sharing lab fraud allegations that potentially present a threat to human health or the environment.

OCEFT/CID said it does not have an internal procedure for briefing offices and does not conduct briefings on a regular basis. During the course of an investigation, OCEFT/CID might gather information from the affected office (e.g., through meetings, emails, etc.) as it develops the case. OCEFT/CID said post-case analysis is not its focus. OCEFT/CID stated, “There is no post-mortem lessons learned aside from what might happen naturally during the investigation in terms of back and forth with the offices.” OCEFT/CID also added there is no debrief or formal report drawn up after a prosecution.

- **OIG/OI Policy and Procedure 206, *Case Administration* (2016)**, encompasses administrative aspects of handling complaints and reporting results, but does not address information-sharing with the agency. OIG/OI said its special agents discuss lab fraud matters with Contracting Officers and others (e.g., the EPA’s Suspension and Debarment Division). However, unlike the OIG/OI’s investigative reports that are provided to the EPA concerning employee cases, OIG/OI does not send formal reports on lab fraud investigations. Like OCEFT/CID, OIG/OI said its agents are responsible for communicating relevant information with the affected program office while the case is ongoing, and that Special Agents-In-Charge are responsible for ensuring that this occurs.

The purpose of the 2006 Memorandum of Understanding between OIG/OI and OCEFT/CID is to clarify each office’s respective areas of investigative responsibility. The memo included general obligations of cooperation and information sharing with one another and stated, “Both OIG and CID must immediately notify the other as to any criminal violations that fall within the other organization’s area of independent investigative authority.” Beyond these requirements, investigative office policies do not address sharing fraud techniques with program and regional offices with laboratory responsibilities. However, offices could use this information to strengthen internal control systems for preventing and detecting lab fraud.

Few Lab Fraud Cases, Resource Limitations and Sensitive Information Limit Information Sharing

Lab fraud investigations comprise a small percentage of the total caseload for OIG/OI and OCEFT/CID—just over 1 percent in each office from 2010 to 2016,¹² as shown in Table 3.

Table 3: OIG/OI and OCEFT/CID data on lab fraud from 2010 to 2016¹³

	Total caseload	Lab fraud investigations opened	Percent lab fraud
OIG/OI	1905	21	1.1%
OCEFT/CID	1883	25 ¹⁴	1.3%

Source: OIG summary of OIG/OI and OCEFT/CID information.

Each office described resource limitations that would limit detailed analysis of lab fraud investigations and the formal sharing of information outside of the affected program office. For example, OCEFT/CID said it does not have a large analytical group, and its staff numbers are down 20 percent or so over the past 6 to 8 years. OIG/OI said it conducted trend analyses when it had a lab fraud directorate; however, that group has since disbanded and now OIG/OI does not monitor or analyze proactively. Both offices noted that declining resources means they have to prioritize and shuffle workloads accordingly.

Additionally, staff in each office noted that there could be some instances where information-sharing would be delayed; for example, when a case is in prosecution or in grand jury proceedings. Thus, the formal sharing of information depends on the nuances involved in each case or situation.

Stakeholders Agree on the Need for Information Concerning Lab Fraud Methods/Techniques

As noted above, neither OCEFT/CID nor OIG/OI do trend analyses on lab fraud investigations. Staff in both offices questioned the value of formal information-sharing. One OIG/OI Special Agent said there is no benefit because convictions, suspensions and debarments stand on their own. An OCEFT/CID staff person said they are not hearing program offices ask for lessons learned. An OIG/OI Special Agent noted the benefit and said, “We are not required to brief the program [staff] but it’s a good practice.”

¹² Of these, per our first objective summarized in Chapter 2, only one CLP lab fraud investigation has been conducted.

¹³ Table 3 captures lab fraud cases opened and investigated from 2010–2016, specifically January 2010 through May 2016 for OIG/OI, and January 2010 through September 2016 for OCEFT/CID. This does not include cases opened prior to 2010 still under investigation during the 2010–2016 timeframe.

¹⁴ According to the CID, seven of its 25 lab fraud investigations are still ongoing. Four of those seven investigations are being worked jointly with the OIG.

Stakeholders we interviewed on the CLP's lab fraud controls agreed that learning lab fraud case results would be useful:

- **Headquarters CLP Staff in OLEM.** ASB staff stated that they do not receive information from OIG/OI or OCEFT/CID on cases they are working or have worked on and were resolved, other than those cases that pertain to CLP where information is shared during the course of the investigation. They said such information would be very useful to them for strengthening their controls.
- **Headquarters Quality Staff in OEI.** The Director of OEI's Enterprise Quality Management Division said that when they learn about a situation of non-conformance, they share that information with the QA community through established communication channels (e.g., monthly QA meetings, annual conference and on the OEI website). The Director stated that they do not get information on fraud cases, but she indicated they would share the information if received.
- **Regional CLP CORs.** All EPA regions confirmed that it would be useful to receive more information on the techniques detected by lab fraud investigations. Eight regions said it would be useful to receive specific information on improper laboratory practices. Some of these regions said information could, for example, be utilized in their own monitoring and review of laboratory data. Three regions were not aware of the results of OIG/OI or OCEFT/CID investigations but would like to learn about the fraud techniques discovered. Four regions noted that past lab fraud briefings provided by OIG/OI were useful.

Because lab fraud cuts across so many of the EPA's functions, broad coordination is essential in addressing it.¹⁵

Moreover, impacts of lab fraud are significant,¹⁶ potentially risking human health and undermining the foundations of the EPA's regulatory programs. For example, drinking water regulations require testing for a list of potential contaminants to protect the public from harmful exposures. Testing under hazardous waste regulations may determine harm and responsible parties. Entities incur harm through receipt and reliance on fraudulent test data. The resultant harm may be to the environment (i.e., through the release of what was thought to be safe

¹⁵ EPA, OCEFT, *Report of the Laboratory Fraud Work Group*. September 2001, with June 2002 update, at page 39.

¹⁶ Though not specific to lab fraud, OMB Circular A-123 notes that fraud jeopardizes agency missions by diverting scarce resources from their intended purposes. A single case of fraud can undermine programmatic mission, disrupt services, and force management to expend valuable time and resources to resolve and recover property lost due to fraud. Reputational risks of fraud can damage the perception of an agency, impact employee morale, and create public distrust.

material), a specific community or the government.¹⁷ (See examples of impacts of lab fraud in the following box.)

Examples of Lab Fraud Impacts

- A recent CLP lab fraud case led OLEM to determine that the quality of the data could not be assessed and should not be used for any site cleanup decisions. OLEM issued a recall of all the data produced by the lab. The recall covered all 10 EPA regions and impacted a total of 237 sites. Funds expended on the analysis of the recalled data were approximately \$2.3 million.
- Three former employees of a drinking water laboratory were found to have falsified QA/QC lab data over a 3-year period. Customers affected included schools, day care facilities, government entities, restaurants and mobile home communities.
- The operator of a mass spectrometer, located in a U.S. Geological Survey laboratory responsible for conducting coal and water quality assessments in projects both in the U.S. and abroad, was accused of scientific misconduct and manipulating data. The agency's review revealed far-ranging impacts: retracted or delayed publications due to inaccurate information, diminished employee morale, and reduced public trust in agency-generated information. Moreover, the agency found that 24 research and assessment projects of national and global interest were potentially affected, and that the projects represented about \$108 million in funding.
- A lab president was sentenced to serve 48 months incarceration and pay a \$50,000 fine stemming from concealing and falsifying pesticide residue tests used by the EPA to determine whether levels of pesticide residues in foods are safe and protective of public health. The lab was sentenced to pay a \$15.4 million fine. The president and the company also each paid \$3.7 million in restitution to defrauded pesticide manufacturers and the EPA. The defendants falsified the results of their tests in order to save time and money that would have been necessary to repeat tests that did not meet calibration or QC requirements.

GAO's 2015 fraud risk framework¹⁸ describes the importance of using the results of investigations and prosecutions to adapt fraud risk management activities, such as incorporating new information like changing risks or the effect of actions taken to mitigate risks and address vulnerabilities. This point is particularly important considering that a current CLP lab fraud investigation revealed new techniques that offices need to inform their systems of controls. Sharing this information would inform the development and modification of risk assessments and other control activities described in Chapter 2.

OECA's Office of Site Remediation Enforcement (which manages Superfund enforcement) indicated it needs to know about fraud when a program office is contemplating a decision to recall data. The OECA office can then determine any impact of lab fraud on the EPA's enforcement actions.

For example, the current CLP lab fraud investigation impacted agency enforcement and cost recovery actions, and enforcement staff said prompt notification would help mitigate impacts.

¹⁷ EPA, OCEFT, *Report of the Laboratory Fraud Work Group*. September 2001, with June 2002 update, at pages 4, 24 and 25.

¹⁸ GAO, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP, July 28, 2015.

Conclusion

Broad agency coordination is important to address fraudulent laboratory data and analysis. Although the EPA's investigative groups report few laboratory fraud cases, impacts from any lab fraud remain significant. As OMB has identified, fraud jeopardizes agency missions; and reputational risks of fraud can damage agency perceptions, employee morale and public trust. Information identified in investigations about the methods used to conduct fraudulent laboratory data analysis would be useful for program managers' assessments of existing internal controls.

Agency stakeholders have expressed interest in receiving information on methods/techniques used to perpetrate fraud in order to tighten their internal control systems. Collective agency efforts, such as increased information-sharing on fraud methods, would help the agency to further prevent and detect lab fraud.

Recommendations

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

2. Require the Criminal Investigation Division to share pertinent information from laboratory fraud findings with relevant EPA program and regional offices. Pertinent information includes the fraudulent method or technique used to commit fraud.

We recommend that the Inspector General:

3. Require the Office of Investigations to share pertinent information from laboratory fraud findings with relevant EPA program and regional offices. Pertinent information includes the fraudulent method or technique used to commit fraud.

Agency Response and OIG Evaluation

OECA agreed with Recommendation 2 and provided a planned completion date. Recommendation 2 is considered resolved with corrective actions pending. OECA suggested changes to the report, which we made where appropriate. Appendix B contains OECA's full response to our official draft report.

While OIG/OI did not explicitly agree or disagree with Recommendation 3, the OIG completed its corrective action prior to our final report issuance. Appendix C contains OIG/OI's full response to our official draft report.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS							Potential Monetary Benefits (in \$000s)
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date		
1	13	Conduct and document a formal risk assessment of the EPA's Contract Laboratory Program to determine the adequacy of internal controls currently in place, and determine whether any additional controls are needed to mitigate detected risks.	R	Assistant Administrator for Land and Emergency Management	9/30/17		
2	19	Require the Criminal Investigation Division to share pertinent information from laboratory fraud findings with relevant EPA program and regional offices. Pertinent information includes the fraudulent method or technique used to commit fraud.	R	Assistant Administrator for Enforcement and Compliance Assurance	12/31/17		
3	19	Require the Office of Investigations to share pertinent information from laboratory fraud findings with relevant EPA program and regional offices. Pertinent information includes the fraudulent method or technique used to commit fraud.	C	Inspector General	1/30/17		

¹ C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

Office of Land and Emergency Management Response to Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

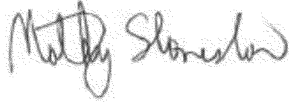
JAN 13 2017

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

NOW THE
OFFICE OF LAND AND
EMERGENCY MANAGEMENT

MEMORANDUM

SUBJECT: Response to Office of Inspector General Report, *EPA's Contract Laboratory Program Includes Adequate Fraud Controls That Can Be Strengthened with Formal Risk Assessment and Investigative Information Sharing* (Report # OPE-FY16-0022; December 13, 2016)

FROM: Mathy Stanislaus
Assistant Administrator 

TO: Arthur A. Elkins, Jr.
Inspector General

Thank you for the opportunity to respond to the recommendation in the subject audit report. The following is a summary of the Office of Land and Emergency Management's (OLEM's) overall position, along with its position on the report recommendation. We have also provided a high-level corrective action and estimated completion date. For your consideration, we have included a Technical Comments Attachment to supplement this response.

OFFICE OF LAND AND EMERGENCY MANAGEMENT'S OVERALL POSITION

OLEM agrees with the recommendation that the OLEM Assistant Administrator conduct and document a formal risk assessment of the EPA's Contract Laboratory Program (CLP) to determine whether additional internal controls are needed to mitigate detected risks.

The Analytical Services Branch (ASB) within OLEM's Office of Superfund Remediation and Technology Innovation (OSRTI) administers the Contract Laboratory Program (CLP). To that end, ASB has initiated a formal CLP risk assessment and will provide the results to OLEM and the Office of the Inspector General by Fiscal Year 2017's fourth quarter.

As noted in the OIG report's Chapter 2 ("CLP's Internal Control System Addresses Four of Five Components and Should Formally Assess Program Risks"), the CLP has documented risk assessment on an informal but continual basis. This ongoing effort resulted in the development of new tools and updated guidance documents to address any potential risks identified. Going forward ASB will formally document risk assessment as part of its quality assurance process.

RESPONSE TO REPORT RECOMMENDATIONS

Agreements

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
1	Conduct and document a formal risk assessment of the EPA's CLP to determine the adequacy of internal controls currently in place, and determine whether any additional controls are needed to mitigate detected risks.	The EPA will conduct and document a formal risk assessment of the CLP	4 th Quarter FY 2017

CONTACT INFORMATION

If you have any questions regarding this response, please contact Kecia Thornton, OLEM OIG Audit Follow up Coordinator, at (202) 566-1913.

Attachment: Technical Comments

cc: Carolyn Copper, OIG
Patrick Gilbride, OIG
Erin Barnes-Weaver, OIG
Barry Breen
Nitin Natarajan
Jim Woolford
Dan Powell
Keith Upah
Daniel Ginsburg

Technical Comments Attachment

Audit Objectives

The Analytical Services Branch welcomes the opportunity to be the subject of this review because we continuously strive to maintain a thorough and effective capability to detect improper practices, and to provide relevant information to our stakeholders in a timely manner concerning the impacts of improper practices and fraud. ASB is always re-evaluating our processes to maintain a high level of effectiveness and efficiency, and we are grateful for the opportunity to learn from the experience of others.

Comment 1: Chapter 1, Quality Assurance / Quality Control Processes (paragraph 2)

ASB has included guidelines for evaluating and documenting data quality since the early days of the CLP through the National Functional Guidelines (NFG). These guidance documents (posted on the CLP website, along with the Statements of Work (SOW). The NFG are intended to provide a logical, stepwise approach to evaluating data quality, and a set of recommendations for documenting those findings for the data users. We recognize that data quality requirements are usually project-specific, depending on the project purpose and scope, and that project data reviewers should use our guidelines in conjunction with the project Quality Assurance Project Plan (QAPP).

The ASB and our EPA Regional counterparts conduct laboratory performance monitoring, beginning prior to contract award with pre-award on-site audits and pre-award performance evaluation samples (PES). On-site audits are also conducted post-contract award on an annual basis, and PES testing is routinely done, both on a quarterly basis, and as an optional part of Regional sample shipments.

Chapter 1, CLP Key Entities (paragraph 3, bullet 2)

The Quality Assurance and Technical Support (QATS) contractor is directed and tasked by the ASB. The QATS team provides a wide range of QA support to the CLP, and more broadly to the EPA in general, including conducting on-site laboratory audits, reviewing laboratory quality system documents; performing the development, preparation, management, distribution, evaluation, and reporting of performance evaluation samples for ASB and the EPA Regions to support Superfund activities, designing and conducting method validation studies, evaluating new sample preparation and analysis techniques, and conducting in-depth hard-copy and electronic data package audits. This latter task has proven most useful to ASB, in several Special Audit Investigations, to identify improper practices.

Chapter 1, Lab Fraud Allegations

The ASB strives to pursue all instances of improper practices identified either by our QATS team during their on-site or electronic data package auditing activities, or by our EPA Regional data review teams. To our knowledge, there is no regulatory authority involved with these activities, only the responsibility for contract administration. These monitoring activities focus on the

Technical Comments Attachment

question of whether or not the requirements of the contract and the SOW have been followed, and occasionally instances of improper practice are found and are documented. ASB will then seek to discover whether the instance noted was a simple error, or is more common among a laboratory's product. Data, submitted by the labs, which resides in the SMO database, and the investigative tools and skills of the QATS team are our primary tools in this effort, and the information gained is communicated to our management, to OAM, our customers, and to the OIG at the appropriate time.

Chapter 2, Internal Control Systems

The ASB agrees that formal documentation of our assessment of risk, subjected to the type of periodic review and re-evaluation that is a normal part of our current operation, could make our system of internal controls more robust.

Chapter 3, Stakeholders Agree on the Need for Information Concerning Lab Fraud Methods/Techniques (paragraph 2, bullet 3)

ASB has presented information on its own experience with monitoring for and detecting improper laboratory practices to the CLP Regional stakeholders (most recently, at the CLP conference, November 2016); the Headquarters Quality Staff in OEI and the community of Regional QA Managers (on their monthly call, November 2016); and to the NELAC/TNI analytical chemistry community (National Environmental Monitoring Conference, August 2016)). These included evaluating the scope and temporal extent of improper practices, as well as the impacts of any subsequent data recall on the community of data users, including cost and delays in completion of EPA projects. In addition, OIG investigator Susan Chandler presented several examples of the types of improper practices her office had been investigating at the CLP Conference in 2014.

Office of Enforcement and Compliance Assurance Response to Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 18 2017

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OPE-FY16-0022, "EPA's Contract Laboratory Program Includes Adequate Fraud Controls That Can Be Strengthened with Formal Risk Assessment and Investigative Information Sharing" dated December 13, 2016

FROM: Cynthia Giles
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Arthur A. Elkins, Jr.
Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject audit report. OECA generally agrees with the report's findings and recommendations, with one suggested edit to the report and one suggested edit to Recommendation No. 2.

Specifically, OECA suggests striking the statement on pages 5-6, which states, "According to OCEFT, the EPA's regulatory authority to inspect environmental labs is limited to labs that participate in the CLP" as that does not accurately reflect EPA's regulatory authority.

Additionally, OECA suggests revising Recommendation No. 2 to state, "Require the Office of Criminal Enforcement, Forensics and Training (OCEFT) to share pertinent information from laboratory fraud investigations with relevant EPA program, regional and enforcement offices and for the Analytical Services Branch within the Office of Land and Emergency Management, Office of Superfund Remediation and Technology Innovation to share pertinent information concerning laboratory fraud with EPA's regional and headquarters enforcement offices. Pertinent information, at a minimum, includes the fraudulent method or technique used to commit fraud."

Agreements

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
2	Require the Criminal Investigation Division to share pertinent information from laboratory fraud findings with relevant EPA program and regional offices. Pertinent information includes the fraudulent method or technique used to commit fraud.	Review current information dissemination policies and practices and meet with relevant EPA program, regional and enforcement offices to determine how to best communicate that information.	December 31, 2017 (1st Quarter FY 2018)

CONTACT INFORMATION

If you have any questions regarding this response, please contact Gwendolyn Spriggs, OECA's Audit Follow Up Coordinator on 202-564-2439, or via email spriggs.gwendolyn@epa.gov.

Office of Inspector General Response to Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 13 2017

THE INSPECTOR GENERAL

MEMORANDUM

SUBJECT: Office of Inspector General Comments on OIG's Draft Report,
*EPA's Contract Laboratory Program Includes Adequate Fraud Controls That Can Be
Strengthened With Formal Risk Assessment and Investigative Information Sharing.*
Project No. OPE-FY16-0022

FROM: Arthur A. Elkins Jr. *AA Elkins Jr.*

TO: Dr. Carolyn Copper, Assistant Inspector General
Office of Program Evaluation

This memorandum is in response to the subject Office of Inspector General (OIG) draft report. The OIG appreciates the evaluation of the Contract Laboratory Program. The OIG Office of Investigations has read the draft report's Recommendation 3, addressed to the Inspector General, that involves action to be taken by the Office of Investigations. The recommendation and OIG response are as follows:

Recommendation 3: Require the Office of Investigations to share pertinent information from laboratory fraud findings with relevant EPA program and regional offices. Pertinent information includes the fraudulent method or technique used to commit fraud.

OIG Response: OIG Office of Investigations management believes pertinent information from laboratory fraud cases is already being shared with the relevant EPA program and regional offices at the appropriate times. However, to ensure that there is no misunderstanding, the Assistant Inspector General for Investigations will send an email message reminding the staff of this requirement. Moreover, the Office of Investigations will continue conducting fraud awareness briefings for its EPA stakeholders, as well as other federal, state, local and tribal partners.

Timeframe: OIG will have the Assistant Inspector General for Investigations' email completed by January 30, 2017. The fraud awareness briefings will continue as needed.

If you have any questions regarding the OIG response, please contact Craig Ulmer, Deputy Assistant Inspector General for Investigations, at (202) 566-0943.

cc: Charles Sheehan, Deputy Inspector General
Patrick Sullivan, Assistant Inspector General for Investigations

Attachment

Distribution

The Administrator
Assistant Administrator for Land and Emergency Management
Assistant Administrator for Enforcement and Compliance Assurance
Inspector General
Agency Follow-Up Official (the CFO)
Agency Follow-Up Coordinator
General Counsel
Associate Administrator for Congressional and Intergovernmental Relations
Associate Administrator for Public Affairs
Deputy Assistant Administrator, Office of Land and Emergency Management
Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance
Audit Follow-Up Coordinator, Office of the Administrator
Audit Follow-Up Coordinator, Office of Land and Emergency Management
Audit Follow-Up Coordinator, Office of Enforcement and Compliance Assurance

To: Schnare, David[schnare.david@epa.gov]; Konkus, John[konkus.john@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Benton, Donald[benton.donald@epa.gov]
From: Jackson, Ryan
Sent: Mon 3/6/2017 12:23:09 AM
STUMP1.docx

The Administrator and I will be traveling Monday and Tuesday. Please do not worry about the 8am either days.

However, we need to use this time to develop the final ticker or whatever format for upcoming agency actions and rulemakings, consent decree negotiations and which ones need to be revisited, upcoming grants (I have something working on that), and upcoming NOV's and enforcement case filings. We'll need to present these formats to him by the Wednesday am meeting. Please loop Byron into this.

The midterm review notice is well in hand. We need to develop the notices issued pursuant to the energy independence EO to be able to report to the Administrator Wednesday as well.

Also, per Kevin's emails, we'll need to circle back with the Administrator at some point soon on how we are going to make good on the ANPRM on WOTUS.

I'm still gathering information on the Wednesday morning event at the WH, but Wednesday afternoon he'll travel to Houston with Samantha for CERA. Konkus, we will need a speech for that. Attached is the speech for NAM. I think CERA will need to be slightly different.

Thank you guys. See you Wednesday.

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

To: Schnare, David[schnare.david@epa.gov]
From: Bromberg, Kevin L.
Sent: Thur 2/23/2017 8:11:07 PM
Subject: FW: Special Report: Early challenges for the Pruitt EPA

Do you get Inside EPA? If not, you should. You're in the article.

Ex. 6

Ex. 6

Pruitt's Lack Of EPA Experience Raises Concern As His Team May Face Delay

February 23, 2017

Newly installed EPA Administrator Scott Pruitt may have to wait months to have his senior leadership team in place as concern grows that he will be running a large federal agency that he does not understand -- and did not attempt to do so ahead of his Feb. 17 Senate confirmation vote, Pruitt's supporters inside and outside the agency say.

His supporters fear that these deficiencies may hamper Pruitt's bid to steer EPA back to focusing on its core mission of clean air, clean water and cleaning up contaminated sites.

Among their concerns is that Pruitt is believed to have selected a chief of staff, Ryan Jackson, who similarly lacks any EPA experience and has been hostile to the agency during his tenure as staff director and chief of staff to Sen. James Inhofe (R-OK), when he led the Senate Environment & Public Works Committee.

Jackson also lacks a national perspective, having focused mainly on Oklahoma issues, particularly oil and gas, and has been keeping Pruitt walled off from the rest of the agency including campaign staff on the Trump beachhead team, they say.

In addition, Pruitt has not had much contact with senior staff, including White House appointees at the agency. When Pruitt gave his first remarks to EPA employees on Feb. 21, he said he was meeting former Acting Administrator Catherine McCabe for the first time that day.

And shortly after Pruitt's speech, senior White House adviser Don Benton, who is serving as the administration's beachhead team leader at the agency, told reporters outside EPA headquarters that he was looking forward to getting to know the new administrator a bit better at an informal lunch that day.

Additionally, Pruitt had yet to meet with agency ethics officials until Feb. 21 to begin discussing what issues to include in his formal recusal letter.

While Pruitt's distance from the agency between his Dec. 8 nomination and Feb. 17 confirmation may be somewhat routine, his supporters are concerned that he is going into a hostile agency blind and will have a difficult time navigating obstacles.

EPA career staff are already highly skeptical of Pruitt, who was selected to lead an agency he has sued more than a dozen times. He has complained of its regulatory overreach, and during his Feb. 21 speech to staff he did not acknowledge the agency's core mission of protecting clean air and water, much less its climate change work that he is expected to roll back.

"Not a single reference to protect[ing] clean air, water, land. Seems more focused on serving industry than he does protecting public health. Not a very encouraging opening statement from someone who is supposed to be our top environmental steward," said one former EPA official in response to Pruitt's speech to staff.

Reaction from current staff to the speech appears to run from tepid to "condescending," according to several staffers.

Pruitt's reputation among the staff was likely further diminished after he was

forced by an Oklahoma state judge to release emails from his tenure as Oklahoma's attorney general that detail his close ties to industry.

However, one source close to the administration expects Pruitt to proceed carefully at the agency, noting he is a lawyer and not known for doing anything rash.

'Months and Months'

Adding to this, environmentalists say they intend to encourage Senate Democrats to delay confirming any other political appointees at EPA -- meaning Pruitt's deputies and assistant administrators may not be in place for a long while.

Benton acknowledged this possibility in his scrum with reporters, saying Pruitt may have to wait “months and months” to get a team in place.

However, Benton pushed back against concerns that Pruitt will face difficulties in choosing his own team, similar to Secretary of State Rex Tillerson, whose continued lack of a deputy is a growing problem.

Benton -- a former Washington state senator and former Trump campaign adviser who says he intends to stay on at EPA though his role has not been announced -- said President Donald Trump understands an executive needs to bring in people to help do their jobs, and that any delay for Pruitt would likely be due to the Senate's schedule in holding hearings and votes more than executive branch issues.

But it is unclear how many of Pruitt's picks for his own team will be approved by the White House.

Benton and others say that Pruitt has already sent over a slate of nominees -- names he declined to share -- to the Presidential Personnel Office, though it is also unclear how many have been OK'd.

In addition to Benton, other members of the Trump campaign and EPA beachhead team are expected to win prime political and other spots at EPA, and many of those people similarly lack any substantive agency experience. There is not thought to be a lot of overlap between Trump campaign staff and Pruitt's picks.

One Trump administration source told *Inside EPA* last week that Pruitt should not expect to have all of his choices approved because campaign officials serving on the beachhead team "will come first, over Scott's people."

Chief of Staff

Meanwhile, Jackson -- who is not yet listed in EPA's employee directory though many sources say he is Pruitt's chief of staff -- has worked for Inhofe since 2003, according to his *LinkedIn* profile. Prior to that he was an assistant district attorney in Tulsa, and earned his bachelor's and law degrees at Oklahoma universities.

Neither Jackson nor EPA's press office responded to questions from *Inside EPA* about concerns over his preparedness for the job.

Jackson came on board to help guide Pruitt through the confirmation process in the Senate, according to a Jan. 27 E&E article, that adds Jackson also worked in Inhofe's Senate office in 1999 as a case worker. The article quoted industry attorney Scott Segal as saying Jackson would make a "good chief of staff" if he took the job.

But one former Hill staffer questions Jackson's ability to shepherd Pruitt through

what is expected to be a thorny tenure at EPA. "Ryan is an Inhofe guy, through and through," the source says, noting he started his career on the Oklahoma senator's campaign team when he won his first term in 1994.

And while this source believes Jackson has done a good job for Inhofe focusing on Oklahoma issues -- and noting this is how he knows Pruitt, who served as the state's top lawyer since 2010 -- he questions his ability to come into a federal agency without having worked beyond Capitol Hill, especially never having dealt with career agency officials. That is "a difficult shift. I don't know if it will be a good fit."

Jackson is "likeable enough. . . . He's got a good personality but Pruitt is going into change things [at EPA], and that's going to be tough." Pruitt's arrival signals a "culture change for everybody," particularly because of the administrator's own lack of familiarity with the agency. "Ryan has been more focused on one part of the country and he is just an unknown quantity."

The Trump administration source says another hurdle for Jackson is the need to learn to create a well-functioning EPA team to work with the White House policy people, who will dictate the agenda. "And the big question is how long will it take him to figure this out?"

Another Inhofe alumnus, Andrew Wheeler, is said to be under consideration for a top post, possibly deputy administrator. The former Hill staffer believes he would be able to better maneuver at EPA because of his familiarity with it and the statutes it implements, as does Mike Catanzero who has worked both for Inhofe and at EPA, and was just named to Trump's National Economic Council as an energy adviser.

A third former Inhofe staffer, George Sugiyama, is also on the EPA beachhead team.

It remains unclear whether Wheeler -- now an attorney at Faegre Baker Daniels Consulting and leader of the group's energy and natural resources practice -- will

get the nod from the White House if Pruitt wants to tap him. The other rumored top deputy administrator contender is former North Carolina environment chief Don van der Vaart. Names floated as possible air office chief include former Bush-era acting chief Bill Wehrum and beachhead team member and former longtime EPA attorney David Schnare, according to several sources.

Delay Tactics

Meanwhile, environmentalists say they intend to seek to delay Senate confirmation of other EPA posts in a bid to seek to stop Pruitt's de-regulatory agenda. "We will do everything we can to fight back," one source says, adding that "delay is definitely the hope" though it is unclear how successful that strategy will ultimately be.

But the plan is to delay confirmations of political appointees, "probably anyone that has to get an approval. It depends on who they select."

The source says environmentalists are wistfully hoping that career staff "inside will be trying to do stuff counter to what" the people in charge want them to do, and will be able to do so in a way that it is not immediately realized.

A delay strategy could leave several particularly key offices with acting officials in place -- including Sarah Dunham as acting air chief who moved into the role from directing the agency's Office of Atmospheric Programs, and Kevin Minoli who is acting general counsel.

The administration source says proponents of delay may believe some of these officials will slow-walk orders and may be willing to be disciplined or worse, and then file employment complaints that would serve to distract resources away from advancing the Trump agenda.

The administration source would not comment on the likely success of such a

strategy, but suggests it is a concern.

Finally, environmentalists and others continue to brace for Trump to sign EPA-related executive orders as soon as this week that could tell Pruitt to scale back agency rules, particularly its climate work, and that one of the orders may go so far as to seek to undo the greenhouse gas endangerment finding that is the underpinning of all of the agency's GHG regulations.

However, the source close to the administration says the orders -- which may be come in the form of presidential memorandums -- will not touch the endangerment finding.

What the orders will address and whether Trump will come to EPA to sign them remains to be seen. Benton said the timing of the orders is a question for Pruitt or the White House. EPA's press office referred questions to the White House, which did not respond.

"They certainly went hugely bold on immigration, and see where it got them," the environmentalist says. -- *Dawn Reeves* (dreeves@iwpnews.com)

To: Schnare, David[schnare.david@epa.gov]
From: Starfield, Lawrence
Sent: Fri 3/3/2017 5:11:34 PM
Subject: RE: a few minutes

Great. Is there a good time between 1:45 - 3 pm? Should I meet you in 3402?

Larry

From: Schnare, David
Sent: Friday, March 03, 2017 11:38 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: Re: a few minutes

Early afternoon

Sent from my iPhone

On Mar 3, 2017, at 11:34 AM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:

Dave,

Do you have a few minutes today or early next week to talk about the Environmental Justice topic?

Larry

Larry Starfield
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
(202) 564-2440 (office)
(202) 564-8179 (direct)
(202) 505-0961 (cell)

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

To: Schnare, David[schnare.david@epa.gov]; **David Schnare Personal Email/Ex. 6**
From: Kevin Bogardus
Sent: Thur 3/16/2017 2:17:29 PM
Subject: Resignation

David,

Hi, it's Kevin Bogardus with E&E News.

I'm working on a piece about your resignation from EPA, citing your resignation email (please see below).

I don't need a comment from you but if you have any other thoughts you wish to share, I would be happy to add them to the piece.

If you do want to comment, please get back to me as soon as possible. My deadline is noon EST today but the sooner you get back to me, the more it helps my reporting. Thank you for your help.

Kevin Bogardus

E&E News reporter

kbogardus@eenews.net

202-446-0401 (p)

Personal Phone/Ex. 6 (c)

202-737-5299 (f)

Follow me [@KevinBogardus](https://twitter.com/KevinBogardus)

E&E NEWS

122 C Street, NW, Suite 722, Washington, DC 20001

www.eenews.net • www.eenews.tv

EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV

P.S. – Here is the email that I was referring to:

From: "Schnare, David" <schnare.david@epa.gov>

Date: March 15, 2017 at 2:41:18 PM EDT

To: 2017CareerTransitionLeaders <2017CareerTransitionLeaders@epa.gov>, 2017HQfirstassistants <2017HQfirstassistants@epa.gov>, 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>

Cc: "Willis, Sharnett" <Willis.Sharnett@epa.gov>, "Brazauskas, Joseph"

<Joseph.Brazauskas@mail.house.gov>, "john.k.mashburn" **EOP/Ex. 6**

<john.k.mashburn@epa.gov> **EOP/Ex. 6** "Catanzaro, Michael J. EOP/WHO"

<Michael.J.Catanzaro@epa.gov> **EOP/Ex. 6** "Bremberg, Andrew P. EOP/WHO"

<Andrew.P.Bremberg@epa.gov> **EOP/Ex. 6** "Jackson, Ryan" <jackson.ryan@epa.gov>

Subject: Resignation

Dear colleagues:

Transitions begin and they end. I have been honored to have had the opportunity to serve the Trump Administration, but I have completed as much as I am able. Thus it is time for me to move on.

I will resign effective COB Friday and will be on leave until then.

My contact information for any who wish to remain in touch:

Personal Contact Info/Ex. 6

Personal Contact Information/Ex. 6

I wish each of you the best.

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]
Cc: Benton, Donald[benton.donald@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Allen, Reginald[Allen.Reginald@epa.gov]
From: Reeder, John
Sent: Tue 2/14/2017 2:34:42 AM
Subject: Re: Pruitt oath

And maybe the I.D., set up email. Wld be nice to clear that off.

Sent from my iPhone

> On Feb 13, 2017, at 8:18 PM, Schnare, David <schnare.david@epa.gov> wrote:
>
> Will be at 2 pm Friday. Jackson will talk to Pruitt tonight to see if he wants to do anything on Friday. I suggested we do PSD and an informal discussion of the major issues list. We then do day one on Tuesday.
>
> dschnare
>
> Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: Connors, Sandra
Sent: Mon 3/13/2017 9:57:21 PM
Subject: Could you pls forward info from OW on the Buy American steel item? Thx!

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov];
Brown, Byron[brown.byron@epa.gov]
From: Jackson, Ryan
Sent: Mon 3/6/2017 12:12:56 AM
Subject: EOs
EOs and Presidential Memorandums.docx

Excuse typos on this. However, we have 4 EOs or Memorandums now addressing EPA. Byron will not receive this attachment until he is entirely set up so please loop him into this. We need to address how we are going to meet these EOs since some are running on a 60 day clock well running before we arrived.

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

Personal Phone/Ex. 6

PRESIDENTIAL EOs and MEMORANDUMS TO DATE AND HOW THEY ADDRESS EPA

Since January 20, President Trump has issued 15 executive orders, 12 memorandums, and 2 proclamations.

Executive Orders to date – President Trump’s 12 executive orders address reducing the burden of Obamacare ¹, **expediting environmental reviews**², cutting federal funds to sanctuary cities³, enforcing border security through a wall⁴, implementing a temporary ban on travel from seven terrorism-prone nations⁵, lobbying restrictions⁶, reducing government regulations (eliminating 2 for every new 1)⁷, reviewing Dodd-Frank regulations⁸, establishing a crime task force under the AG⁹, addressing violent crime against law enforcement¹⁰, addressing drug cartels¹¹, and removing the former acting AG¹², regulatory reform¹³, WOTUS reconsideration¹⁴, and historically black colleges¹⁵.

Memorandums to date – The Administration has also issued 12 memorandums addressing the federal

¹ **Executive Order** on January 20, 2017

[Executive Order Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal](#)

² **Executive Order** on January 24, 2017

[Executive Order Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects](#)

³ **Executive Order** on January 25, 2017

[Executive Order: Enhancing Public Safety in the Interior of the United States](#)

⁴ **Executive Order** on January 25, 2017

[Executive Order: Border Security and Immigration Enforcement Improvements](#)

⁵ **Executive Order** on January 27, 2017

[EXECUTIVE ORDER: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES](#)

⁶ **Executive Order** on January 28, 2017

[Executive Order: ETHICS COMMITMENTS BY EXECUTIVE BRANCH APPOINTEES](#)

⁷ **Executive Order** on February 03, 2017

[Presidential Executive Order on Core Principles for Regulating the United States Financial System](#)

⁸ **Executive Order** on February 03, 2017

[Presidential Executive Order on Core Principles for Regulating the United States Financial System](#)

⁹ **Executive Order** on February 09, 2017

[Presidential Executive Order on a Task Force on Crime Reduction and Public Safety](#)

¹⁰ **Executive Order** on February 09, 2017

[Presidential Executive Order on Preventing Violence Against Federal, State, Tribal, and Local Law Enforcement Officers](#)

¹¹ **Executive Order** on February 09, 2017

[Presidential Executive Order on Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking](#)

¹² **Executive Order** on February 09, 2017

[Providing an Order of Succession Within the Department of Justice](#)

¹³ **Executive Order** on February 24, 2017

[Presidential Executive Order on Enforcing the Regulatory Reform Agenda](#)

¹⁴ **Executive Order** on February 28, 2017

[Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule](#)

¹⁵ **Executive Order** on February 28, 2017

[Presidential Executive Order on The White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities](#)

regulatory review (Priebus Memo)¹⁶, the federal hiring freeze¹⁷, TPP¹⁸, reinstatement of Mexico City policy (international abortion funding)¹⁹, directing Army Corps of Engineers to move forward with steps to permit the Dakota Access Pipeline²⁰, directing the State Department, Army Corps, and to expedite consideration of KXL permit should TransCanada resubmit for a permit²¹, directing Commerce Secretary to develop a made in USA policy for pipeline construction²², directing Commerce Secretary to get input from stakeholders and coordinate with federal agencies **including the EPA** and develop a plan to streamline the federal permitting processes and to reduce regulatory burdens for domestic manufacturing²³, rebuilding the military²⁴, a plan to defeat ISIS²⁵, the NSC²⁶, and DOL's fiduciary duty rule²⁷.

EPA Involvement in EOs and Memos to date – In particular, “Executive Order Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects” issued January 24, 2017, provides that upon the request by a Governor, the head of any executive department or agency, or on its own, the Chairman of CEQ will decide whether a project of high priority and if so coordinate with the head of the relevant agencies to establish expedited procedures and deadlines for completion of environmental reviews and approvals for such projects.

Additionally, the “Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing” also issued January 24, 2017, provides that the Commerce Secretary work with EPA to identify ways to streamline federal permitting and regulatory burdens on domestic manufacturing in particular.

The “Presidential Executive Order on Enforcing the Regulatory Reform Agenda” requires the EPA to designate a Regulatory Reform Officer (RRO), a task force, and do a review of regulations issued by EPA.

¹⁶ **Presidential Memorandum** on January 20, 2017

[Memorandum for the Heads of Executive Departments and Agencies](#)

¹⁷ **Presidential Memorandum** on January 23, 2017

[Presidential Memorandum Regarding the Hiring Freeze](#)

¹⁸ **Presidential Memorandum** on January 23, 2017

[Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement](#)

¹⁹ **Presidential Memorandum** on January 23, 2017

[Presidential Memorandum Regarding the Mexico City Policy](#)

²⁰ **Presidential Memorandum** on January 24, 2017

[Presidential Memorandum Regarding Construction of the Dakota Access Pipeline](#)

²¹ **Presidential Memorandum** on January 24, 2017

[Presidential Memorandum Regarding Construction of the Keystone XL Pipeline](#)

²² **Presidential Memorandum** on January 24, 2017

[Presidential Memorandum Regarding Construction of American Pipelines](#)

²³ **Presidential Memorandum** on January 24, 2017

[Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing](#)

²⁴ **Presidential Memorandum** on January 27, 2017

[Presidential Memorandum on Rebuilding the U.S. Armed Forces](#)

²⁵ **Presidential Memorandum** on January 28, 2017

[Presidential Memorandum Plan to Defeat the Islamic State of Iraq and Syria](#)

²⁶ **Presidential Memorandum** on January 28, 2017

[Presidential Memorandum Organization of the National Security Council and the Homeland Security Council](#)

²⁷ **Presidential Memorandum** on February 03, 2017

[Presidential Memorandum on Fiduciary Duty Rule](#)

Of course, the reviewing WOTUS was EPA's with the ANPRM issued with the Army Corps of Engineers.

To: Schnare, David[schnare.david@epa.gov]
Cc: Konkus, John[konkus.john@epa.gov]
From: Milbourn, Cathy
Sent: Wed 3/8/2017 3:25:10 AM
Subject: Re: Draft GHG News Release

Thank you David.

Sent from my iPhone
Cathy Milbourn
Office of Media Relations
202-564-7849
202-420-8648

On Mar 7, 2017, at 9:45 PM, Schnare, David <schnare.david@epa.gov> wrote:

They are correctly stated.

Sent from my iPhone

On Mar 7, 2017, at 6:02 PM, Milbourn, Cathy <Milbourn.Cathy@epa.gov> wrote:

Hi David,

Nice to see you again. I'm asking for your advice. Please look at two sentences highlighted in yellow below to see if there are any issues with including that information as stated in the release. The first sentence includes portions of the exact language used to finalize the action under the previous administration—specifically, I'm asking about the 54.5 MPG. The last sentence in the third paragraph—highlighted in yellow-- is what I believe would be EPA's next action. Please let me know if those two things are correctly stated.

Thank you!

Cathy

President Trump Directs EPA, DOT to Reexamine GHG Standards for Cars and Light Trucks

WASHINGTON — Today, Department of Transportation Secretary (DOT), Elaine Chao, and U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt will revisit an Obama Administration era rule that finalized standards to increase fuel economy to the equivalent of 54.5 mpg for cars and light-duty trucks by Model Year 2025.

[Place Holder Quote for DOT]

“These CAFE standards are costly for automakers and the American people,” said EPA Administrator Scott Pruitt. “We will work with our partners at DOT to take a fresh look to determine if this approach is realistic. This thorough review will help ensure that this national program is good for consumers and good for the environment.”

The Midterm Evaluation process was established as a part of the 2012 final greenhouse gas emissions standards for model years 2017-2025, requiring EPA to determine no later than April 1, 2018, whether the standards established are appropriate. The action the agency is taking today will ensure that deadline is met. If the agency believes that the final determination issued by the previous administration is not realistic, it would submit a new proposal for public comment.

Midterm Evaluation Process: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/midterm-evaluation-light-duty-vehicle-greenhouse-gas-ghg>

Catherine C. Milbourn

Office of Media Relations

Office of the Administrator

U.S. EPA HQ

202-564-7849 (office)

202-420-8648 (mobile)

Milbourn.cathy@epa.gov

To: Personal Email/Ex. 6
From: Microsoft Outlook
Sent: Thur 3/9/2017 3:28:13 PM
Subject: Undeliverable: Fwd: OPA Clips 3/9/17
Fwd: OPA Clips 3/9/17



Your message to Personal Email/Ex. 6 couldn't be delivered.

chris wasn't found at horner.com.

schnare.david

Office 365

chris

Action Required

Recipient

Unknown To address

How to Fix It

The address may be misspelled or may not exist. Try one or more of the following:

- **Send the message again following these steps:** In Outlook, open this non-delivery report (NDR) and choose **Send Again** from the Report ribbon. In Outlook on the web, select this NDR, then select the link "To send this message again, click here." Then delete and retype the entire recipient address. If prompted with an Auto-Complete List suggestion don't select it. After typing the complete address, click Send.
- Contact the recipient (by phone, for example) to check that the address exists and is correct.
- The recipient may have set up email forwarding to an incorrect address. Ask them to check that any forwarding they've set up is working correctly.
- Clear the recipient Auto-Complete List in Outlook or Outlook on the web by following the steps in this article: [Fix email delivery issues for error code 5.1.1 in Office 365](#), and then send the message again. Retype the entire recipient address before selecting Send.

If the problem continues, forward this message to your email admin. If you're an email admin, refer to the More Info for Email Admins section below.

Was this helpful? [Send feedback to Microsoft.](#)

More Info for Email Admins

Status code: 550 5.1.1

This error occurs because the sender sent a message to an email address outside of Office 365, but the address is incorrect or doesn't exist at the destination domain. The error is reported by the recipient domain's email server, but most often it must be fixed by the person who sent the message. If the steps in the **How to Fix It** section above don't fix the problem, and you're the email admin for the recipient, try one or more of the following:

The email address exists and is correct - Confirm that the recipient address exists, is correct, and is accepting messages.

Synchronize your directories - If you have a hybrid environment and are using directory synchronization make sure the recipient's email address is synced correctly in both Office 365 and in your on-premises directory.

Errant forwarding rule - Check for forwarding rules that aren't behaving as expected. Forwarding can be set up by an admin via mail flow rules or mailbox forwarding address settings, or by the recipient via the Inbox Rules feature.

Mail flow settings and MX records are not correct - Misconfigured mail flow or MX record settings can cause this error. Check your Office 365 mail flow settings to make sure your domain and any mail flow connectors are set up correctly. Also, work with your domain registrar to make sure the MX records for your domain are configured correctly.

For more information and additional tips to fix this issue, see [Fix email delivery issues for error code 550 5.1.1 in Office 365](#).

Original Message Details

Created Date: 3/9/2017 3:28:11 PM
Sender Address: schnare.david@epa.gov
Recipient Address: chris@horner.com
Subject: Fwd: OPA Clips 3/9/17

Error Details

Reported error: 550 5.1.1 <chris@horner.com> Recipient not found.
<http://x.co/irbounce>

DSN generated by: BN6PR09MB1505.namprd09.prod.outlook.com

Remote server: p3plibsmtp01-05.prod.phx3.secureserver.net

Message Hops

	HO	TIME	FROM	TO	WITH	RELAY
		(UTC)				TIME
1	3/9/2017 3:28:11 PM	BN6PR09MB1505.namprd09.prod.outlook.com	BN6PR09MB1505.namprd09.prod.outlook.com	BN6PR09MB1505.namprd09.prod.outlook.com	Microsoft Exchange Server (version=TLS1_2,	*
2	3/9/2017 3:28:11 PM	BN6PR09MB1505.namprd09.prod.outlook.com	BN6PR09MB1505.namprd09.prod.outlook.com	BN6PR09MB1505.namprd09.prod.outlook.com	Microsoft Exchange Server (version=TLS1_2,	*

cipher=TLS_ECDHE_RSA_WITH_AES_256

Original Message Headers

DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=usepa.onmicrosoft.com; s=selector1-epa-gov; h=From:Date:Subject:Message-ID:Content-Type:MIME-Version; bh=3dq9z2QgeMov701DYv6bInrIo5LcU5JkleDjqDmjlk=;

b=bx3q0Skr6tJsxWEzGuxcpXbMk7/Txjj6AH4EvAeYMV0w99eDeqfU+UF2HIEEkIobGR0idj4kG4/2id8X+YceDu72

Received: from BN6PR09MB1505.namprd09.prod.outlook.com (10.173.202.145) by BN6PR09MB1505.namprd09.prod.outlook.com (10.173.202.145) with Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_CBC_SHA384_P384) id 15.1.947.12; Thu, 9 Mar 2017 15:28:11 +0000

Received: from BN6PR09MB1505.namprd09.prod.outlook.com ([10.173.202.145]) by BN6PR09MB1505.namprd09.prod.outlook.com ([10.173.202.145]) with mapi id 15.01.0947.022; Thu, 9 Mar 2017 15:28:11 +0000

From: "Schnare, David" <schnare.david@epa.gov>

To: "chris@horner.com" <chris@horner.com>, "dwschnare@gmail.com" <dwschnare@gmail.com>

Subject: Fwd: OPA Clips 3/9/17

Thread-Topic: OPA Clips 3/9/17

Thread-Index: AdKY5EplpDR8kziAT8SbUK23y3t61w==

Date: Thu, 9 Mar 2017 15:28:11 +0000

Message-ID: <507B61EC-96B2-433E-99D9-2EC6D26ECEC4@epa.gov>

References:

<BY2PR09MB1046C96D0077302FA75B3B23E8210@BY2PR09MB1046.namprd09.prod.outlook.com>

Accept-Language: en-US

Content-Language: en-US

X-MS-Has-Attach:

X-MS-TNEF-Correlator:

authentication-results: spf=none (sender IP is)

smtp.mailfrom=schnare.david@epa.gov;

x-ms-exchange-messagesentrepresentingtype: 1

x-originating-ip: [97.47.65.36]

x-ms-office365-filtering-correlation-id: 5cb384aa-769b-40bb-6b7d-08d46700e55b

x-microsoft-antispam: UriScan:;BCL:0;PCL:0;RULEID:(22001);SRVR:BN6PR09MB1505;

x-microsoft-exchange-diagnostics:

1;BN6PR09MB1505;7:ojvte4AnhpE4E3m3LgU6RUpwLjTIUwz8LodUsROuzOB/dglA6QrRFTE19V78CPPsWpjJuaaw

x-microsoft-antispam-prvs:

<BN6PR09MB15057083B589C931B2C4ED40EE210@BN6PR09MB1505.namprd09.prod.outlook.com>

x-exchange-antispam-report-test:

UriScan:(201743425380201)(20558992708506)(98201998250105)(72170088055959)(261320762254229)

x-exchange-antispam-report-cfa-test:

BCL:0;PCL:0;RULEID:(6040375)(601004)(2401047)(5005006)(8121501046)(10201501046)(3002001)(6

x-forefront-prvs: 0241D5F98C

x-forefront-antispam-report:

SFV:NSPM;SFS:(10019020)(39450400003)(54094003)(51444003)(377454003)(5423002)(111735001)(14

received-spf: None (protection.outlook.com: epa.gov does not designate permitted sender hosts)

spamdiagnosticoutput: 1:99

spamdiagnosticmetadata: NSPM

Content-Type: multipart/alternative;

boundary="_000_507B61EC96B2433E99D92EC6D26ECEC4epagov_"

MIME-Version: 1.0

X-OriginatorOrg: epa.gov

X-MS-Exchange-CrossTenant-originalarrivaltime: 09 Mar 2017 15:28:11.0779 (UTC)

X-MS-Exchange-CrossTenant-fromentityheader: Hosted

X-MS-Exchange-CrossTenant-id: 88b378b3-6748-4867-acf9-76aacbeca6a7
X-MS-Exchange-Transport-CrossTenantHeadersStamped: BN6PR09MB1505

To: **Personal Email/Ex. 6**
From: Schnare, David
Sent: Thur 3/9/2017 3:28:11 PM
Subject: Fwd: OPA Clips 3/9/17

Ex. 6

Sent from my iPhone

Begin forwarded message:

From: "McGonagle, Kevin" <mcgonagle.kevin@epa.gov>
Date: March 9, 2017 at 9:49:18 AM EST
To: "So, Katherine" <so.katherine@epa.gov>, "McCabe, Catherine" <McCabe.Catherine@epa.gov>, "Reeder, John" <Reeder.John@epa.gov>, "Flynn, Mike" <Flynn.Mike@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Hull, George" <Hull.George@epa.gov>, "Slotkin, Ron" <slotkin.ron@epa.gov>, "Sowell, Sarah" <Sowell.Sarah@epa.gov>, "Hart, Daniel" <Hart.Daniel@epa.gov>, "Orquina, Jessica" <Orquina.Jessica@epa.gov>, "Actadmmccabe, Catherine17" <Actadmmccabe.catherine17@epa.gov>, "Benton, Donald" <benton.donald@epa.gov>, "Bangerter, Layne" <bangerter.layne@epa.gov>, "Davis, Patrick" <davis.patrick@epa.gov>, "Ericksen, Doug" <ericksen.doug@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Greaves, Holly" <greaves.holly@epa.gov>, "Kreutzer, David" <kreutzer.david@epa.gov>, "Munoz, Charles" <munoz.charles@epa.gov>, "Schnare, David" <schnare.david@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>, "Sugiyama, George" <sugiyama.george@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>, "Valentine, Julia" <Valentine.Julia@epa.gov>, AO OPA Media Relations <AO_OPA_Media_Relations@epa.gov>
Subject: OPA Clips 3/9/17

Below: CNBC (2), Bloomberg BNA (2), E&E News (2), InsideClimate News, LA Times, InsideEPA (3/8), Quartz (3/8)

CNBC

<http://www.cnbc.com/2017/03/09/trumps-epa-chief-says-he-will-address-fuel-economy-standards-very-soon.html>

Trump's EPA chief says he will address fuel economy standards 'very soon'

By Jacob Pramuk 3/9/17 9:28 AM

The head of President Donald Trump's Environmental Protection Agency said Thursday he expects an announcement rolling back fuel economy rules "very soon."

Automakers have expressed concern about the rules set during the Obama administration, which would have pushed auto fuel economy standards to 54.5 miles per gallon by 2025. Some companies have said the Corporate Average Fuel Economy, or CAFE, standard would boost regulatory compliance costs.

EPA Administrator Scott Pruitt, who has pledged to roll back what he deems burdensome regulations, told CNBC that American automakers wanted to evaluate those standards. He said he believes the rulemaking process was rushed.

"There's going to be an announcement on that very soon and I think what's concerning to me, and I think concerning to the president, is how that process occurred," Pruitt said on "Squawk Box."

"I think that what has been broken in that process is, one, not a recognition of the great progress that's been made with those standards, but two, those in Detroit, those that are manufacturing autos in this country, expressed to the EPA that they wanted to evaluate the impact of the previous standards. And that was largely disregarded."

Backers of the Obama administration rules, which the EPA issued only a week before Trump took office, say automakers have overblown the potential costs of complying with them. They also argue that consumers may be willing to pay for better fuel economy, in any case.

Trump has held several meetings with key executives since taking office, some of which have included the CEOs of Ford and General Motors.

CNBC

<http://www.cnbc.com/2017/03/09/epa-chief-scott-pruitt.html>

EPA chief Scott Pruitt says carbon dioxide is not a primary contributor to global warming

By Tom DiChristopher 3/9/17 8:57 AM

Environmental Protection Agency Administrator Scott Pruitt said Thursday he does not believe carbon dioxide is a primary contributor to global warming.

"I think that measuring with precision human activity on the climate is something very challenging to do and there's tremendous disagreement about the degree of impact, so no, I

would not agree that it's a primary contributor to the global warming that we see," he told CNBC's "Squawk Box."

"But we don't know that yet ... We need to continue the debate and continue the review and the analysis," he added.

Pruitt's view is at odds with the opinion of NASA and the National Oceanic and Atmospheric Administration.

"The planet's average surface temperature has risen about 2.0 degrees Fahrenheit (1.1 degrees Celsius) since the late 19th century, a change driven largely by increased carbon dioxide and other human-made emissions into the atmosphere," NASA and NOAA said in January.

Pruitt previously served as Oklahoma attorney general, where he rose to prominence as a leader in coordinated efforts by Republican attorneys general to challenge President Barack Obama's regulatory agenda. He sued or took part in legal actions against the EPA 14 times.

Democrats and environmentalists opposed Pruitt's nomination to lead the EPA due to his close relationship with fossil fuel companies and his history of casting doubt on climate change. Conservatives and the energy industry have cheered his efforts to push back on what they view as over-regulation under Obama.

Pruitt maintained on Thursday it's possible to be pro-growth, pro-jobs and pro-environment all at once.

"This idea that if you're pro-environment you're anti-energy is just something we've got to change so that attitude is something we're working on very much," he said.

Pruitt also called the Paris Agreement, an international accord aimed at mitigating the impacts of climate change, "a bad deal."

"I happen to think the Paris accord, the Paris treaty, or the Paris Agreement, if you will, should have been treated as a treaty, should have gone through senate confirmation. That's a concern," he said.

The Paris Agreement was negotiated by the State Department, and future adherence to U.S. commitments made under Obama will be guided by current Secretary of State Rex Tillerson.

Bloomberg BNA

http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=106790562&vname=dennotallissues&wsn=499970

Trump's Water Promises Face Challenges in 115th Congress

By Sarah Babbage and Adam Schank 3/9/17

President Donald Trump promised a major new investment in infrastructure, including water projects, during his campaign.

His budget proposal, however, is said to propose a 25 percent cut to the budget of the Environmental Protection Agency, which administers many water programs. Financing for water projects could also be imperiled by a tax code overhaul, though it could also benefit from the new administration's drive to cut regulations.

Revolving Loan Funding vs. EPA Cuts

One of Trump's campaign promises was to triple funding for the state revolving loan programs that help state and local governments upgrade their drinking and waste water infrastructure.

The funds had an annual allotment of \$2.2 billion in fiscal 2016, requiring another \$4.4 billion to meet the president's goal. If Congress provided funding in line with Trump's proposal, tripled revolving funds would leave little space for any other EPA programs.

The EPA is currently operating under an annualized budget of \$8.3 billion, including \$120 million in supplemental funding for lead contamination in the Flint, Michigan, water supply. The funds were provided under the continuing resolution that expires on April 28, and further action will be needed to keep the agency operating after that date.

While EPA's budget has been relatively flat in recent years, the current level is still less than the \$8.7 billion provided in fiscal 2011.

Whither the Municipal Bond Tax Break?

Water authorities and other municipal governments are pre-emptively defending the tax exemption for municipal bond interest, which politicians from both sides of the aisle have previously eyed as an offset for tax cuts.

The tax preference, which Treasury predicts will cost \$565 billion over the next decade, allows state and local governments to issue bonds at lower interest rates that are attractive to investors because the interest is tax-free. The House Republican tax reform blueprint proposed closing most credits and deductions to offset cuts to personal and corporate tax rates.

At least 70 percent of water utilities use municipal bonds to finance their capital investments. Municipal governments issued \$34 billion in bonds to fund water projects in 2014.

Trump has said he supports the exemption. If Republicans' other major tax pay-for -- the controversial border adjustment tax -- can't get through Congress, it's more likely to be capped or eliminated to generate revenue to offset tax cuts.

\$1 Trillion for Infrastructure

Trump's water infrastructure push was part of his campaign promise to spend as much as \$1 trillion on infrastructure, which he called on Congress last week to fund through a combination of public and private dollars.

Although his speech barely mentioned water, EPA Administrator Scott Pruitt wants it included in the investment. "One of the things I've tried, in communicating to the White House, is that when we talk about infrastructure spending outside of the budget this year, water infrastructure needs to be part of that," Pruitt said in an interview with Bloomberg BNA.

A \$1 trillion investment is substantially more than any recent proposal. Hillary Clinton proposed a \$275 billion investment, while the 2009 stimulus law appropriated \$150 billion for infrastructure.

Financing Options

Trump's campaign proposed a one-time 10 percent tax on the \$2.6 trillion in profits that corporations have been holding overseas to avoid the U.S.'s 35 percent top tax rate, and using some of the revenue for infrastructure. The House GOP tax blueprint also proposed a deemed repatriation tax, but would use the proceeds to pay for personal and corporate tax cuts.

Congressional Democrats, however, have shown an interest in funding infrastructure through repatriation, so it could be used as a bipartisan bargaining chip.

The Trump campaign also released a white paper that proposed raising \$167 billion from private investors that would leverage debt financing for a total investment of \$1 trillion. Investors would receive an 82 percent tax credit for their investment, and the government would pay for it through the increased tax revenue from contractor profits and worker wages, the paper said.

Democrats have characterized the plan as a tax giveaway and have said it's a non-starter.

Finally, Trump criticized Clinton for proposing an infrastructure bank during her 2016 campaign, but Treasury Secretary Steven Mnuchin has since said it's worth considering. Infrastructure banks pair federal seed money with private dollars to fund projects that are generally large or of regional significance.

In addition to possible skepticism from Trump, an infrastructure bank could face opposition from other Republicans. Pennsylvania Republican Bill Shuster, chairman of the House

Transportation and Infrastructure Committee, called the idea “a boondoggle” in a Feb. 7 interview with Bloomberg News.

Regulatory Rollbacks

Republicans in Congress are attempting to advance a package to repeal and replace the Affordable Care Act, and have said they'll tackle the tax code next. That leaves little room on the spring calendar, which adds to the challenges of funding and assembling a major infrastructure package.

Water entities could, however, benefit from Trump's promise to roll back regulations and speed up review processes.

An executive order signed Jan. 24 would allow governors or the head of a federal agency to designate an infrastructure project as high priority. If the administration agreed, the project would qualify for expedited procedures to get through its environmental reviews.

House Natural Resources Committee Chairman Rob Bishop, a Utah Republican, has also said he wants to take a close look at federal environmental laws to speed up the permitting and review process under the National Environmental Policy Act.

Making those changes legislatively will be difficult as any bill will need to obtain 60 votes in the Senate to overcome a likely filibuster from Democrats.

Bloomberg BNA

http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=106790572&vname=dennotallissues&wsn=499965

Great Lakes Representatives Demand Threatened Cleanup Money

By Sylvia Carignan 3/9/17

A proposal to chop over 90 percent of federal funding for Great Lakes cleanup would “reverse years of progress,” three representatives told a House subcommittee March 7.

The proposal came from the Office of Management and Budget earlier this month. The cut would bring the Environmental Protection Agency's budget for the Great Lakes Restoration Initiative from \$300 million a year to \$10 million annually.

The proposal is subject to agency and congressional approval, but Reps. Sandy Levin (D-Mich.), David Joyce (R-Ohio) and Louise Slaughter (D-N.Y.) made clear they will fight it. The multi-agency restoration initiative started in 2010 to focus on cleaning up contaminated areas of the Great Lakes, reduce nutrient runoff, restore native species' habitats and control invasive species.

Great Lakes cleanup resources “have supplemented agency budgets to fund coordinated efforts to protect and restore the Great Lakes ecosystem, and we must ensure that this important work continues,” they wrote to the House appropriations committee's Interior and Environment subcommittee. “Halting this commitment would reverse years of progress, dramatically reduce the [Great Lakes Restoration Initiative's] impact, and jeopardize the environmental and economic health of the region.”

Deep Cuts

Levin, Joyce and Slaughter are leading the effort to get their colleagues’ support on the letter this month. More than 50 members of Congress signed a similar letter asking for continued Great Lakes funding in 2016.

Matt Doss, policy director at the Great Lakes Commission in Ann Arbor, Mich., said the \$10 million allocation would not only hobble cleanup efforts, but wouldn't be enough funding to support the EPA's Great Lakes program office.

Bill Becker, executive director of the National Association of Clean Air Agencies, spread word about the proposed cuts in an email he sent to his members March 1.

According to Becker, the OMB's proposal for the EPA slashed staff and grants to states as well as the Great Lakes Restoration Initiative. A group representing U.S. and Canadian mayors in the Great Lakes also has warned the proposed cuts to the initiative would be devastating.

E&E News

<http://www.eenews.net/climatewire/2017/03/09/stories/1060051168>

Pruitt’s first moves worry enviros, open records advocates

By Niina Heikkinen 3/9/17

Ethical and legal questions that dogged Scott Pruitt's nomination process are continuing to shadow his first weeks as U.S. EPA administrator.

From concerns about transparency with his use of private email for official business as Oklahoma attorney general to questions about conflict of interest stemming from his new role at an agency he sued more than a dozen times, environmental and advocacy groups are keeping a close eye on the actions of the new administrator.

Environmental groups called foul late last week when Pruitt canceled an information collection request (ICR) on methane emissions from oil and gas facilities.

The Obama administration had started gathering information from the industry in

preparation for writing regulations to control methane emissions and other greenhouse gases from existing sources. EPA finalized regulations on methane for new and modified sources, the New Source Performance Standards, last year. Pruitt halted the ICR a day after receiving a letter from nine attorneys general and two governors. They contended that collecting the data was too expensive and burdensome to the fossil fuel industry.

"There is extremely well-documented and well-founded reasons to collect this information, and at a stroke of a pen to reverse that at the industry's bidding, it surely looks like EPA is at the beck and call of industry, and there is no justification that we can see for that request to be withdrawn," said Vera Pardee, senior counsel at the Center for Biological Diversity.

She noted that once EPA regulates new sources, the agency has an obligation to "create guidance" for existing sources, too.

The move sent a "strong signal" that the administrator would not move forward with controlling methane emissions, said David Doniger, senior attorney at the Natural Resources Defense Council's climate and clean air program.

That might mean legal trouble ahead for Pruitt if he indeed does not go forward with regulating methane under the Clean Air Act and the new source regulation stays on the books. Environmental groups did not comment on whether they would pursue legal action against the agency. However, yesterday NRDC filed a Freedom of Information Act request with EPA to determine whom Pruitt was communicating with about the ICR prior to making the decision to cancel it.

"It has the hallmark of decision that is legally vulnerable," said Sean Donahue, legal counsel for the Environmental Defense Fund.

Donahue noted that the letter was signed by attorneys general who are close to Pruitt, as well as the new Oklahoma attorney general, Mike Hunter, who had served as Pruitt's first assistant attorney general.

"[Pruitt] holds himself out as protecting states, but he uses regard for federalism as a euphemism for a regard for industry interest," Donahue said. "But in this issue, there are states on both sides, and there are states that believe that [methane] is threatening imminent harm. It doesn't seem like he understands that he is in a new job and he represents everyone."

Pruitt supporters hail end to 'onerous' regs

EPA did not return a request to comment on whether the agency would be moving forward with methane regulations at a later date. Last year, as Oklahoma attorney general, Pruitt joined in a lawsuit brought by West Virginia against EPA, challenging the rule regulating methane for new sources.

Representatives of the fossil fuel industry maintain that the information collection process

was poorly timed and badly handled by the Obama administration and was being challenged well before Pruitt was confirmed as EPA administrator.

"I think the environmental groups are just very upset because they were counting on a different administration that would move forward with very onerous existing source rules," said Kathleen Sgamma, president of the Western Energy Alliance.

"The bottom line was this ICR was rushed at the last minute, it was not well thought-out and was asking for data that would have overwhelmed the agency. It was sending out a huge net to trawl in all kinds of data that would not be useful for regulating methane," she said.

The challenge to the ICR was not in opposition to providing data about methane emissions, at least according to the Independent Petroleum Association of America. Instead, it had objected in part because the agency did not follow advice to seek out data that were already publicly available through state agencies and the private website Drillinginfo, said Lee Fuller, executive vice president of IPAA.

Fuller said IPAA had provided public comment to EPA under the Obama administration, and then had requested a halt to the ICR once Donald Trump was elected president, especially since there is ongoing litigation challenging the new source regulations.

"We started talking to the transition team with the Trump administration, so the new administration could make a decision about whether it would want to pursue the same pathway as the Obama administration. We continued to urge them to reconsider the approach and well before there was any administrator," said Fuller.

He called the decision to terminate the ICR the "right course of action."

Transparency an ongoing concern

As environmental groups seek to dig into Pruitt's communications with industry and his former attorney general colleagues, they may run into another problem: access to his email.

Advocacy groups say there could be cause for concern about transparency at a Pruitt-led EPA, after a recent court case against the former Oklahoma attorney general revealed he had used private email, at least on occasion, to conduct official business.

"The problem is, we don't know how extensive his use of personal email was, we had very few examples of him using his Oklahoma [attorney general] account, there is a lingering question over how prevalent it was," said Nick Surgey, research director at the Center for Media and Democracy.

"We're asking the court to ensure that Scott Pruitt's [personal] email account was searched for and any emails that should have been included in the request to us," Surgey said.

Pruitt's use of private email was not in accordance with the "spirit of the law," said Alex Howard, deputy director of the Sunlight Foundation, an open-government advocacy organization.

"Certainly if an official does have a pattern of using private messaging, then people will naturally put those people under more scrutiny for using that approach," Howard said.

If Pruitt did use a private email as EPA administrator, the public would have a hard time getting access to the records unless the private account is leaked or made public in some way.

Barrasso 'pleased' Pruitt will now stick to EPA email

While it's possible to submit a FOIA request for the administrator's personal email, there has to be some sort of record or trail showing its existence, said Aaron Scherb, director of legislative affairs at Common Cause, a lobbying organization.

"You can't just say any private email address that John Doe could use," said Scherb.

The EPA administrator joins Vice President Mike Pence and former Secretary of State Hillary Clinton as the latest politician to be publicly outed for using personal email for official business.

While they may be the most prominent recent examples, the use of personal email, personal devices and private messaging apps is common practice in all levels of government and among all parties, according to Howard.

"Sometimes it's a matter of convenience, sometimes it's intentional," Howard said. "This is the digital equivalent of stepping out into the hallway to have a conversation that's not on the record."

Now that Pruitt is working at a federal level, he will be subject to more public laws and record requirements than he was as a state attorney general. But short of putting politicians under 24-hour surveillance, there is no way to prevent these kinds of communications from happening, Howard said.

"We have to trust them that they are going to do their best to follow the law," he said.

A spokesman for Sen. John Barrasso (R-Wyo.), head of the Senate Environmental and Public Works Committee, said in an email that the senator had asked Pruitt about whether he would use personal email to conduct EPA business during his confirmation hearing.

"The chairman asked Pruitt if he would commit to only using his EPA email account for official EPA business. The chairman was pleased that Pruitt agreed," the spokesman said.

E&E News

The Clean Power Plan is gone – and there's no 'replace'

By Evan Lehmann 3/9/17

The White House intends to unravel the Clean Power Plan without providing a replacement, according to a source briefed on the issue.

An executive order expected to be released next week also instructs the Justice Department to effectively withdraw its legal defense of the climate rule in the U.S. Court of Appeals for the District of Columbia Circuit. The move aligns the White House with about two dozen Republican state attorneys general who are challenging the way the rule restricts greenhouse gas emissions at power plants.

The result, if successful, would mean the case is "frozen in place," the source said, preventing the D.C. Circuit, which has six judges appointed by Democrats and four by Republicans, from issuing an opinion this spring. Other legal experts say the case could continue if states or other groups go on defending the rule.

"Justice goes to the court and says ... 'Don't waste your time trying to put together an opinion when the legal basis for the case that you're reviewing could potentially go away,'" the source said. "Normally, a court will grant that. There's no guarantee."

It was unclear until now if the Trump administration would "repeal and replace" the Clean Power Plan, or just set upon a path to undo it. Some had anticipated that the Trump administration might pursue an alternative and much less stringent rule, but the executive order will only call for the withdrawal of the regulation.

That raises questions about whether EPA would fail to satisfy legal requirements to regulate carbon dioxide and other climate pollutants.

The agency in 2009, responding to the Supreme Court, determined that greenhouse gases endanger human health. That requires EPA to regulate emissions, and the agency did that by promulgating the Clean Power Plan.

"I think, as a matter of law, that carbon is a pollutant has been settled," said Christine Todd Whitman, who served as EPA administrator under President George W. Bush. "EPA has to act once you have that kind of a finding."

Waiting for the 'right time'?

The new details are surfacing as the White House confirmed yesterday that the executive order's release would be delayed. It was scheduled to be signed by President Trump this week. Now that will likely occur next week.

The delay follows successful efforts by Ivanka Trump, the president's daughter, and her husband, Jared Kushner, to remove language from the order that was critical of the Paris Agreement on climate change.

The current order does not refer to the global pact, and the source said that issue did not hold up the order's release. The delay was caused by the rise of other priorities, including the release of the Republican health care proposal Monday, the source said.

Trump also caused unforeseen turbulence Saturday by accusing former President Obama of wiretapping Trump Tower.

Coal companies and mining groups, which Trump described as being victimized by the climate rule on the campaign trail, have waited patiently through the delays. But now that he's 49 days into his presidency, there are subtle signs that industry wishes he would act more swiftly.

Jeff Holmstead, a former assistant EPA administrator under Bush who represents opponents to the rule, said it's likely the White House is waiting for the right time to unveil the rule with maximum effect.

"I hope it's soon," he added. "I think everybody, certainly all of my clients, think the Clean Power Plan is dead. But there's always uncertainties."

Fresh lawsuits await

For some Democrats, the order represents a tightrope walk. It's bound to be challenged in court by liberal state attorneys general and environmental groups for not providing an alternative to the Clean Power Plan. But if it did provide one, Republicans in coal states would likely feel that Trump had abandoned his campaign promise to terminate the regulation.

"It's not like [Senate Majority Leader] Mitch McConnell [R-Ky.] will say, 'OK, they're gonna do a new rulemaking on power plants, so I'm sure it'll be better,'" said Heather Zichal, Obama's former climate adviser. "They fundamentally don't think coal plants should be held accountable for their carbon pollution. So how do you deal with that piece? I think politically that's hard for them."

Environmental groups are already promising to sue EPA for failing to comply with its own endangerment finding.

"If EPA withdraws [the rule] and does not replace it with strong standards, we will challenge the agency's action in court," said Joanne Spalding, the chief climate counsel at the Sierra Club.

The administration anticipates that. The executive order instructs EPA to "revise or rescind"

the Clean Power Plan, wording that's meant to comply with the Administrative Procedure Act by letting EPA, not the White House, determine the fate of the rule.

The agency will then go through the long rulemaking process. But rather than promulgating a new rule, it will terminate an existing one. It will post notice and take comments and then put out a proposed rule. After accepting more comment, the action will be finalized. Then the administration is "off to the races in court," the source said.

The Clean Power Plan is just one part of the executive order, which is geared around "energy independence."

It does not address the endangerment finding, which is the underpinning of current and future EPA regulations on greenhouse gases. No decision has been made by White House officials about whether to attack the finding in subsequent actions, the source said.

"That is a huge issue," the source said. "That's just going to require a lot of thinking."

InsideClimate News

<https://insideclimatenews.org/news/09032017/epa-environmental-justice-mustafa-ali-flint-water-crisis-dakota-access-pipeline-trump-scott-pruitt>

Chief Environmental Justice Official at EPA Resigns, With Plea to Pruitt to Protect Vulnerable Communities

By Phil Mckenna 3/9/17

The head of the environmental justice program at the Environmental Protection Agency has stepped down, departing the government with a lengthy letter to Scott Pruitt, the EPA's new administrator, urging him not to kill the agency's programs.

Mustafa Ali, a senior adviser and assistant associate administrator at the agency, worked to alleviate the impact of air, water and industrial pollution on poverty-stricken towns and neighborhoods during nearly a quarter century with the EPA. He helped found the environmental justice office, then the environmental equity office, in 1992, during the presidency of President George H.W. Bush.

Ali leaves the EPA as Pruitt, who took office Feb. 17, prepares to implement deep cuts in the agency's budget and staff. A Trump administration proposal would cut the EPA's \$8 billion budget by \$2 billion and reduce its roster of 15,000 employees by 20 percent. An internal memo obtained by multiple news outlets on March 1 called for a complete dismantling of the office of environmental justice and elimination of a number of grant programs that address low-income and minority communities. A story in the Oregonian reported that funding for the office would decrease 78 percent, from \$6.7 million to \$1.5 million.

Justice issues have become an environmental focal point in recent years—most recently in the battle to clean up lead-contaminated water in Flint, Mich., a largely African-American community, and in the fight to stop the nearly completed Dakota Access pipeline just upstream of the Standing Rock Reservation in North Dakota.

"I think it's going to be one of the major civil rights issues of the 21st century," said Benjamin Wilson, head of the National Environmental Justice Conference and chairman of the law firm Beveridge & Diamond. "It's going to become increasingly not simply local but regional, national and international in scope."

Ali said he has received no indication that the adviser position or his job as assistant associate administrator in the agency's Office of Enforcement and Compliance Assurance will be filled by the Trump administration. EPA officials declined to comment on the positions.

The EPA made strides during the Obama administration to address environmental justice concerns, including incorporating equity into regulatory decision-making, and adopting a long-term strategy in its EJ 2020 Action Agenda. The agency was, however, heavily criticized for not doing enough to address environmental concerns of low-income and minority populations.

Ali said in an interview that he considers the shielding of poor and minority neighborhoods from the effects of pollution a crucial function of the EPA, but that the agency's new leaders have not given "any indication that they are focused or interested in helping those vulnerable communities. My values and priorities seem to be different than our current leadership and because of that I feel that it's best if I take my talents elsewhere."

Still, in his resignation letter, which was devoid of rancor, Ali urged former Oklahoma Attorney General Pruitt, a longtime opponent of EPA regulation, to reconsider proposed cuts to environmental justice programs. "When I hear we are considering making cuts to grant programs like the EJ small grants or Collaborative Problem Solving programs, which have assisted over 1,400 communities, I wonder if our new leadership has had the opportunity to converse with those who need our help the most," Ali wrote. "I strongly encourage you and your team to continue promoting agency efforts to validate these communities' concerns, and value their lives."

Meanwhile, the power that Ali once wielded inside the EPA has been dissipated. His position as senior adviser to the EPA administrator was eliminated in January when Obama's EPA chief Gina McCarthy left, he said.

"I am heartbroken that Mustafa feels that his time of productivity in the agency has passed," McCarthy said in an interview. "He managed the interagency working group on environmental justice," she said, referring to a conclave of federal agencies that met to discuss common concerns. "So when I say we brought actions and strategies to the table, it wasn't just EPA, it was throughout the federal government."

Part of the environmental justice program's strategy was to help leverage its relatively small grants into large programs. The town of Spartanburg, South Carolina, for example, received a \$20,000 environmental justice grant to help clean up contaminated industrial sites in the town. Spartanburg ultimately raised more than \$270 million from public and

private sources and used the recovered land to build housing, a job training facility and health centers.

"You're talking about a community that was devastated and that raised itself up because you had great community members and they had somebody who listened to them at the federal government," McCarthy said. "Mustafa was one of those people. I went to that community. I sat with the mayor. He gave me a key to the city. We were sitting in a community center that had been developed as a result of this small start, where somebody paid attention to that community and it happened to be EPA."

Cynthia Giles, assistant administrator for the Office of Enforcement and Compliance Assurance in the Obama administration, cites the town of Tonawanda, New York, to which the EPA gave a small grant to conduct ambient air monitoring. The grant "ultimately led to a criminal case that EPA brought against Tonawanda Coke Corporation for high levels of benzene emissions," Giles said.

Giles said there is no economic justification for killing the justice program. "The money that is involved is not noticeable in the overall scheme of budgets," she said. "The only reason to eliminate it would be to send a message—that they don't care about the needs of the most vulnerable communities."

"We've had both [Republican and Democratic administrations] over time and none of them tried to do anything to destroy what the previous administration had done," Ali said. "Folks are just hoping that this one will wake up and see value in continuing this important work."

Yet Ali sees nothing in Pruitt's background to support that hope. He repeatedly sued the EPA for its efforts to regulate CO2 emissions, mercury and other forms of pollution. "When the administrator was in Oklahoma I do not know of any time that he made environmental justice a priority," Ali said.

Pruitt tweeted last month he was dedicated to working with "stakeholders—industry, farmers, ranchers, business owners—on traditional values of environmental stewardship."

Some of the responses the tweet garnered included: "What about environmental advocates?" "What about...people w/o access to safe water & air? Our children?" And "what about ordinary citizens."

In a February statement, advocacy group We Act for Environmental Justice said of Pruitt: "His record indicates he lacks awareness or concern for communities impacted by asthma and other environmental health-related issues."

Ali, who grew up near a coal-fired power plant in West Virginia, interned in the office of William Reilly, the agency's third administrator, before joining as a staff member in the newly formed office of environmental equity in Nov. 1992. From 2007-2008, Ali worked on Capitol Hill in the office of Congressman John Conyers before returning to the EPA. He proudly boasts that he has worked on environmental justice issues in more than 500 communities.

"His work and the work of the EPA has helped empower people, and whenever we can have a clear articulation of the issues, it's amazing the common ground that can be

reached by people on opposing sides," Wilson said. "But if we never have that discussion, that frustration festers and that is never good."

Ali will join Hip Hop Caucus as a senior vice president. The group is a non-profit that aims to promote political activism for young U.S. voters through hip-hop music and culture. He is scheduled to speak Thursday at an environmental justice conference in Flint, in his first public appearance with the organization.

"What I'm hoping to do is highlight that environmental justice needs to continue to happen," Ali said, "that there are opportunities to make it happen, and that if we don't do it there will be huge public health impacts."

LA Times

<http://www.latimes.com/politics/la-na-pol-regulatory-reform-science-20170309-story.html>

What's at stake as the GOP moves to slash regulations? For starters, clean air

By Evan Halper 3/9/17 3:00 AM

Amid the Republican backlash against federal scientists who write rules governing everything from movie theater popcorn to offshore oil drilling, stories abound of overburdened businesses, heavy-handed civil servants and crushing paperwork.

But another story, one involving a deadly household material, offers a lesson in what can go wrong when government experts are shackled, as currently envisioned under a sweeping regulatory reform bill gliding toward President Trump's desk.

The GOP-backed legislation revives many of the rule-making hurdles that for years crippled the government's ability to respond to the asbestos-exposure epidemic, which has been blamed for tens of thousands of American deaths.

"I don't think lawmakers are focusing on how extreme this legislation is," said Paul Billings, lobbyist for the American Lung Assn., which has joined several major public health groups imploring congressional leaders to apply the brakes. "It has been viewed as this abstraction that creates improvements in the regulatory process. This would undermine bedrock public health laws."

The linchpin of the 87-page proposal is a directive to regulators that may be impossible to meet. They would have to prove they have taken the least costly option possible to business before imposing any major new rule. A similar mandate became stifling when applied for decades to the regulation of chemicals such as asbestos because it allowed companies to keep rules at bay by continually arguing for cheaper approaches.

The Environmental Protection Agency gave up trying to ban the substance in 1991, after a

federal appeals court ruled it had not proved its regulation was the least financially burdensome approach. The decision became a rallying point for overhauling the Toxic Substances Control Act, which guides EPA authority over such chemicals. The act finally was revised last year, and in November, the EPA announced asbestos was among the first chemicals it was targeting with its new authority to require safety reviews.

By then, however, there was not much left for the EPA to do on asbestos, after legions of cancer victims took matters into their own hands with civil actions that bankrupted the industry. But the years of government inaction took their toll. A quarter-century later, nearly 15,000 Americans still die annually of diseases caused by asbestos exposure during their lifetime, according to the Asbestos Disease Awareness Organization.

The new GOP regulatory reform bill, which swiftly passed the House in January without committee debate, would apply the same test that hobbled regulators on asbestos to every major rule the government wants to impose. That includes setting Clean Air Act limits for how much toxic pollution can be released into the air in dense, asthma-infested urban areas like Los Angeles. Car safety, food safety, worker safety and consumer product safety rule-making also would be affected.

The far-reaching plan has been overshadowed by more immediate headlines springing from the White House, where wiretapping conspiracies, travel bans and Obamacare repeal anxieties are consuming the oxygen. Even the regulatory reform blueprint's name — the Regulatory Accountability Review Act — is sleep-inducing, masking the gravity of a proposal the U.S. Chamber of Commerce has placed among its top political priorities at a time when its influence in Washington has surged.

The chamber has invested tens of millions of dollars in lobbying for and promoting the bill, HR 5. It alerted lawmakers just before the measure passed the House in January that it “is a long-standing priority for the chamber” that is “long overdue.” Lawmakers were cautioned in the letter against supporting any amendments that would moderate the proposed law, warning that such action could reflect unfavorably on the politically potent voting scorecard that the organization publishes to rank lawmakers.

While there are several dramatic proposals before Congress to rein in federal rule-makers, lobbyists are advising clients that the bill is one that actually stands a good chance of advancing to a president who is urgently looking to deliver a blow to the bureaucracy. A few moderate Democrats in the Senate already have expressed interest in helping the GOP leadership secure the 60 votes it needs for passage.

Supporters offer a cache of statistics that frame the bill as a common sense plan to give corporations some influence over a regulatory process they say is suffocating them. They point to a spike over the past 15 years in complex federal rules costing businesses more than a billion dollars, and showcase estimates concluding the rules have become such a drag on the economy that they are costing the average American family \$15,000 per year.

“There is a legitimate question of whether you really need this continued churning and

accumulation of all these regulations,” said Susan Dudley, who worked on regulatory reform at the George W. Bush White House and is now director of Regulatory Studies Center at George Washington University.

But others warn the legislation threatens to go considerably further than slowing the churn of rule-making. It directs agencies that for decades have used science alone in crafting major public health and worker safety protections to change course and find the most cost-effective approach for business.

“It’s not hard to look down the line and see the problems this would create,” said Thomas McGarity, professor of administrative law at the University of Texas. He cited several major public safety challenges with which regulators are wrestling and the potentially tragic consequences of cutting corners on oversight, from undrinkable water in cities like Flint, Mich., to blueprints for self-driving 18-wheelers.

Beyond requiring a cost analysis, the legislation also would put dozens of new obstacles on federal agencies before they can finalize a new rule — a process that already takes years. Companies that don’t like the approach would be empowered with a bounty of new opportunities to file legal challenges and demand reviews.

Yogin Kothari, a lobbyist at the Environmental Working Group, sees irony in it all: “Their solution to too much bureaucracy and red tape is adding more red tape.”

Clean Air Act enforcement, which is based on a painstaking analysis of such factors as how many lives would be saved and cases of asthma averted, could be altered drastically. The toll those rules take on corporate profits would gain new currency. Public health officials warn that enforcement of tobacco laws also would be inhibited.

The Consumers Union advised lawmakers that other landmark protections, including the Consumer Product Safety Act and the Securities Exchange Act, would be weakened substantially. “This dangerous proposal would do severe damage to protections consumers depend on,” the group wrote to lawmakers.

Yet the bill’s champions in Congress are undeterred. Among them are Rep. Doug Collins (R-Georgia), who took to the House floor the same day Consumers Union sent its plea.

“It is time we demand the voice of the American people be heard,” Collins said just before casting his vote in favor of the bill, “rather than letting the others up here, separated in cubicles, decide what is best.”

Inside EPA

<https://insideepa.com/daily-news/ecos-mounts-defense-epas-state-funding-assistance-fy18-cuts>

ECOS Mounts Defense OF EPA’s State Funding Assistance from FY18 Cuts

By David LaRoss and Doug Obey 3/8/17

The Environmental Council of the States (ECOS) is mounting a strong defense of EPA grants and other programs that support state activities from the Trump administration's suggested massive cuts to agency funding in fiscal year 2018, warning the cuts could threaten states' ability to meet a wide range of environmental protection goals.

In an exclusive March 8 interview with *Inside EPA*, ECOS President John Linc Stine -- who also serves as commissioner of the Minnesota Pollution Control Agency -- said the council, which represents many state environment regulators, is planning meetings with White House officials and members of Congress in the coming weeks to urge them to defend areas of EPA's budget that provide direct funding support to states.

A reduction in EPA's FY18 budget “has the potential of cutting across the entirety of our activities, but it’s unclear until we see the entirety of their budget document what areas they’re proposing to reduce,” Stine said, with the Trump administration said to consider up to a 25 percent cut to EPA's existing \$8.1 billion funding, including possibly reducing EPA's 10 regional offices to eight.

He told *Inside EPA* that ECOS is scheduling meetings with White House Office of Management & Budget (OMB) officials and legislators “to advise them of our concerns.”

But the states are also acknowledging that any cuts to EPA will almost certainly impact them in some way, because “it’s all a priority for state agencies like ours,” he said.

In a separate March 7 interview, ECOS Executive Director and General Counsel Alex Dunn said cuts could be especially harmful when they affect programs where states have accepted delegated authority from EPA with a promise of federal funding -- and could discourage states from seeking such delegation.

For instance, she said budget cuts might complicate efforts by states like Massachusetts,

which is currently weighing accepting delegated authority over the Clean Water Act discharge permit program.

“The natural question from Massachusetts legislature will be, we are going to take on performing a service or an activity previously done by EPA Region 1. How much will EPA be giving us to assist? . . . When you look at a new delegation it becomes clear that new federal funding should be a part of” the process, she said.

ECOS' Concerns

ECOS has previously raised concerns that the White House's plan to cut EPA's budget significantly may renege on commitments by agency Administrator Scott Pruitt to preserve state grants as he works to return much of the responsibility for implementing environmental programs to states.

In a March 1 letter to Pruitt and OMB Director Mick Mulvaney, ECOS questioned the proposed cuts in light of Feb. 25 remarks by Pruitt at the Conservative Political Action Conference where he called states and EPA "partners, not adversaries," and said, "help is on the way."

While the Trump administration has yet to release its formal budget request for FY18, OMB's initial “pass back” includes a 25 percent cut to EPA's current \$8.14 billion overall budget and a 30 percent cut to many grant programs.

OMB's threatened cuts for EPA have raised concerns among a wide array of stakeholders, including industry and states, that EPA could be left without the funds needed to perform mandatory duties such as providing resources to state environment departments that lack the ability to operate solely on state funds.

“When I look at our budget in Minnesota for example, we receive \$25 million a year in EPA grant funds not including the Great Lakes Restoration Initiative project dollars,” Stine told *Inside EPA*.

He said EPA money “across our grants” supports monitoring for “air, land and water contamination,” state regulators' permitting and enforcement work, and contaminated site cleanups including but not limited to the Superfund and brownfields programs.

In the separate interview, Dunn said, “States have made it pretty clear that core funding for the air, water, land programs needs to remain whole.”

Regional Offices

Beyond threats to federal funds, Stine added that a plan to possibly close EPA regional offices is concerning to state officials, both because states receive technical and regulatory assistance from regional officials and because some high-profile program efforts like the Great Lakes Restoration Initiative (GLRI) are operated by the regions.

The effect of shuttering regional offices “really does depend on the transactional requirements for each regional office, but it would be a concern because if you’re going to have a change . . . there’s always a transitional period where things get less efficient and less clear for people, so there’s time that gets consumed in trying to sort that all out,” he said.

As part of the budget planning process, OMB is requiring EPA to craft a plan for consolidating the current 10 regional offices down to eight in order to realize “efficiencies” -- though it is unclear how likely it is that such a plan will make it into the budget request.

“I know that there are some of the regions that are having a conversation with the states, I think the Western states,” but there are no indications of whether the consolidation will happen, Stine said. He noted that along with GLRI, restoration efforts for the Chesapeake Bay, Puget Sound and San Francisco Bay are all administered through EPA regional offices.

However, he did not dismiss the idea that consolidating regions could ultimately make EPA

more efficient. Beyond the initial “transitional period,” it is “too soon to tell whether it has a positive, negative or neutral impact at this point,” Stine said.

EPA Budget

ECOS discussed budget priorities with OMB staff during a “recent” phone call, Stine and Dunn told *Inside EPA*. There, the White House expressed interest in state input on EPA's budget, signaling that the administration will at least consider states' requests to shore up the agency's funding despite the GOP's long-standing push to dramatically cut its activities.

“It was pretty much a listening and gathering from their perspective. . . . They did ask us to be prepared to carefully review the budget and offer more comments,” Stine said.

Dunn added that OMB appeared to be under pressure to broadly cut federal spending. “It is very clear . . . There is a very strong directive for all agencies to look very closely at the budget,” she said.

Even though Pruitt has vowed to fight to preserve funds for his priorities -- such as water infrastructure assistance, site cleanups and attainment of existing water and air standards -- Stine said it is unclear what steps the agency's leadership is taking or could take to shore up the FY18 budget.

“We’re aware that the agency is in dialogue with OMB about this . . . we’ve not received anything directly from Mr. Pruitt, but we’ve heard in communications with senior staff that they are looking closely at the budget for state programs,” he said.

Dunn said pressure from the White House to cut spending seems to put Pruitt in a tough position, because maintaining state assistance will almost certainly mean deeper cuts to EPA's own programs if EPA's overall budget is in fact reduced.

“The challenge is defending the state programs when the inevitable next question is, what about the staff and the agency that he has to run as well?” she said, adding that if EPA avoids reducing state assistance then it will almost certainly have to cut resources and staff from program offices, prompting “some very difficult decisions.”

ECOS' March 1 letter to Pruitt and Mulvaney called for an increase to state and tribal assistance grants (STAG), including the categorical grants that support states' and tribes' implementation of federal environmental mandates.

"Cuts to STAG categorical grants, or to EPA programs operated by states, will have profound impacts on states' ability to implement the core environmental programs as expected by our citizens," the letter said. -- *David LaRoss* (dlaross@iwpnews.com) & *Doug Obey* (dobey@iwpnews.com)

Quartz

<https://qz.com/928236/the-word-science-has-disappeared-from-the-mission-statement-of-the-epas-office-of-science-and-technology/>

Who needs “science” in an EPA Office of Science and Technology mission statement anyway?

By Zoe Schlanger 3/8/17

The branch of the US Environmental Protection Agency in charge of creating science-based clean water standards no longer has the word “science” in its mission statement.

Earlier this year, the stated mission of the Office of Science and Technology at the EPA’s Water Office was “developing sound, science-based standards,” and “scientific and technological foundations to achieve clean water,” according to a copy of the EPA’s website archived in January on the Internet Archive’s Wayback Machine.

The text of the mission statement has changed; the office’s mandate is now to create “economically and technologically achievable performance standards.” The word “science-based” and “scientific” no longer appear.

A coalition of researchers called the Environmental Data and Governance Initiative, or EDGI, found the changes. They are monitoring about 25,000 government web pages for any modifications under the new administration, by comparing them to copies archived on the Internet Archive by “data rescuing” events staged by archivists and programmers at universities across the country. (EDGI also plans to track any data sets that are removed.)

EDGI researcher Gretchen Gehrke told the New Republic she worries the switch is not just a linguistic detail—that it may signal a change in policy.

Instead of a science-based approach to clean water requirements—where water must meet quality standards based on peer-reviewed toxicology science, and companies can choose how to meet those standards—calling for “economically and technologically achievable” standards puts greater emphasis on the economic impact of regulation, and may mean companies would install certain technologies determined by the EPA rather than comply with a specific water-quality standard.

The EDGI researchers have found a number of other notable website tweaks: Climate change reports have disappeared off of State Department websites, while a description of a federal fracking rule, and another about a methane emissions rule, have also gone missing from Interior Department web pages.

Kevin McGonagle

Office of Media Relations Intern

U.S. Environmental Protection Agency

Telephone: (202)-564-4524

mcgonagle.kevin@epa.gov

Katherine So

Office of Media Relations Intern

U.S. Environmental Protection Agency

Telephone: (202)-564-4511

so.katherine@epa.gov

To: Schnare, David[schnare.david@epa.gov]
From: Davenport, Coral
Sent: Mon 3/6/2017 11:30:21 PM
Subject: Re: moment to chat?

OK, thanks for getting back to me!

On Mon, Mar 6, 2017 at 6:26 PM, Schnare, David <schnare.david@epa.gov> wrote:

No. I don't talk to the media. Please contact our media relations folks.

Sent from my iPhone

On Mar 6, 2017, at 6:24 PM, Davenport, Coral <coral.davenport@nytimes.com> wrote:

Hi, David,
I hope you're well. I'm working on a story on how things are going at the start of
Pruitt's administration of EPA. Would you have a moment to chat?
Cheers,
Coral

--

Coral Davenport
Energy and Environment Correspondent
The New York Times
Washington Bureau
1627 I St. NW, Suite 700
Washington, DC 20006
coral.davenport@nytimes.com
O 202-862-0359
C 703-618-0645
Twitter @CoralMDavenport

--

Coral Davenport
Energy and Environment Correspondent
The New York Times
Washington Bureau
1627 I St. NW, Suite 700
Washington, DC 20006
coral.davenport@nytimes.com
O 202-862-0359

Personal Phone/Ex. 6

Personal Email/Ex. 6

To: Schnare, David[schnare.david@epa.gov]
Cc: Rees, Sarah[rees.sarah@epa.gov]
From: Kenny, Shannon
Sent: Wed 3/1/2017 3:47:03 PM
Subject: Re: Regulatory Review Update

Thanks, David. This is helpful. Samantha just agreed to work through much of this on Friday.

Sent from my iPad

On Mar 1, 2017, at 10:11 AM, Schnare, David <schnare.david@epa.gov> wrote:

I formally handed this off to Samantha and Byron as of today. It is on their head. I think you should get Kruetzer involved. He has a good head and can take a leadership role as needed.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

d.

From: Kenny, Shannon
Sent: Wednesday, March 1, 2017 8:32 AM
To: Schnare, David <schnare.david@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>
Subject: Re: Regulatory Review Update

David - we have info and recommendations ready, but are unsure who/how to get decisions. We need someone who's empowered and also has bandwidth - and we are trying not to step in it with the many new faces around. Thoughts?

Shannon

Sent from my iPhone

On Mar 1, 2017, at 7:19 AM, Schnare, David <schnare.david@epa.gov> wrote:

Where are we in reviewing the category 1 rules, midnight (extended effective date) and FR queue?

dschnare

From: Williams, Michael B. EOP/OMB
Sent: Tuesday, February 28, 2017 6:11 PM
To: Schnare, David <schnare.david@epa.gov>; Benton, Donald
<benton.donald@epa.gov>
Cc: Campau, Anthony <
Subject: Regulatory Review Update

EOP/Ex. 6

EOP/Ex. 6

David and Don,

Thanks so much for your work on the pending regulations list you sent last week. Do you have time this week to jump on a call with Anthony and me to discuss your comments and recommended actions?

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Feel free to include any

other relevant members of your team.

Best,

Michael

Michael B. Williams

Legal

Office of Management and Budget

Personal Phone/Ex. 6

To: Schnare, David[schnare.david@epa.gov]
Cc: Tonja Scott[tscott@hall-associates.com]
From: John Hall
Sent: Mon 3/6/2017 3:27:28 PM
Subject: RE: Meeting request to discuss EPA support for peer reviews

David

No one picks up the phones in the Admin Office – can you please ask Scott’s scheduler to contact Tonja to arrange a meeting on the Taunton matter?

Congressman Kennedy has supported the request, and I understand Gov. Baker.

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: John Hall
Sent: Friday, March 03, 2017 3:35 PM
To: 'Schnare, David'
Subject: RE: Meeting request to discuss EPA support for peer reviews

David

We have been trying to get through on the phones to set this up which is difficult. Can you suggest an email contact that could assist us?

Thanks

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: Schnare, David [<mailto:schnare.david@epa.gov>]

Sent: Friday, March 03, 2017 11:08 AM

To: John Hall

Subject: RE: Meeting request to discuss EPA support for peer reviews

probably

From: John Hall [<mailto:jhall@hall-associates.com>]
Sent: Friday, March 3, 2017 11:07 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Meeting request to discuss EPA support for peer reviews

David

That is good to know. Of course, if OW makes the call, the answer will be no – like before. Anything else would be an admission that something might be awry with their prior decision making.

Do you believe that a client/Congressional rep meeting with Administrator Pruitt is needed to make something positive happen?

Thanks

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: Schnare, David [<mailto:schnare.david@epa.gov>]
Sent: Friday, March 03, 2017 10:57 AM
To: John Hall
Subject: RE: Meeting request to discuss EPA support for peer reviews

Our folks are tracking your requests and I am monitoring them.

d.

From: John Hall [<mailto:jhall@hall-associates.com>]
Sent: Friday, March 3, 2017 10:45 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Meeting request to discuss EPA support for peer reviews

David

As you know several requests have been submitted to address major EPA actions in PA, MA and MN that were based on junk science – or no science at all.

We believe that the best way to resolve the science issues is for the new administration to support the request for peer review (which the prior administration turned down for both Taunton and the PA TMDLs).

Please let me know if you have time to discuss whether EPA will support the request.

PS – Here is a Letter to the Editor CRR submitted to the Post on EPA’s scientific abuses – of course it wasn’t printed.

John

John C. Hall

Executive Director

Center for Regulatory Reasonableness

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: John Hall

Sent: Friday, February 10, 2017 12:10 PM

To: 'Schnare, David'

Subject: RE: Various Junk Science/Illegal Rulemaking Projects Soon to Land on Your Doorstep (can we chat when you have a few minutes)

David

I'm still working on your timeline request re: the other bad science projects I mentioned. The following cases are presently pending before various federal courts. Letters are being submitted to Administrator Pruitt asking for the matters to be placed in abeyance and EPA's position reconsidered:

Challenge to EPA Blending/Bacteria Mixing Zone Ban (CRR v. EPA – DC Cir): EPA ignored 8th Cir *ILOC v. EPA* ruling vacating the illegal/ultra vires NPDES rule modifications and re-imposed them in Nov. 2013. Nationwide cost several hundred billion for blending ban, even greater cost for bacteria mixing zone ban (basically means zero CSO discharge and disinfection of all stormwater discharges). Case pending decision. **Request:** Because briefing is completed, clarify to Court EPA decision to continue imposition of NPDES permitting prohibitions vacated in *ILOC v. EPA*, outside of the 8th Circuit.

Challenge to EPA Permit Action imposing State of the Art Nutrient Limits with No Site-Specific Water Quality Impacts Analyses (City of Taunton v. EPA – 1st Cir.): EPA declared entire Taunton estuary nutrient impaired and created new procedure to claim state of the art TN limits were required (aka "Sentinel Method"); Three top experts stated EPA analysis/Sentinel Method was grossly flawed - EPA HQ agreed new method had never undergone peer review or been demonstrated to be scientifically defensible. Nonetheless, EPA HQ refused to conduct peer review of new method, in violation of Peer Review Handbook governing use of new procedures to be used in regulatory setting. EPA/EAB claimed further technical justification was unnecessary because requirements may be imposed without any "cause and effect" demonstration – which basically re-writes CWA to allow EPA to impose stringent limits without site-specific demonstration of need. Opening briefs April 1, 2017. **Status:** Letter to be submitted from affected Cities shortly asking for matter to be moved to ADR process.

Challenge to Approval of MN Stream Nutrient Criteria with Unprecedented Nutrient Impairment Criteria (CRR. V EPA - DC Dist Ct): EPA promoted MN adoption of unprecedented nutrient impairment indicators (BOD and DO flux) and then approved them, even though EPA knew these parameters do not actually cause "impairment" and numerous non-nutrient factors affect them. EPA's action will result in classifying many additional waters nutrient impaired, when they are not. Nation's (and EPA's) leading expert on proper BOD test usage, *Standard Methods*, informed EPA using the test to predict nutrient impairment was improper – EPA also ignored the finding of this independent expert group. Parties filing motions on administrative record. **Status:** Letter seeking reconsideration to be submitted next week. Expect contact from Congressional Representatives in support of action/reconsideration.

Challenge to NH MS4 permit (Filing on EPA NH action pending; Existing challenge to MA MS4 permit in DC Cir.): EPA radically modified MS4 permit, creating new mandates nowhere found in federal law or regulation and changing basic burden of proof for setting more restrictive requirements under CWA (presume causing impairment unless permittee proves otherwise); EPA action created federal review authority over all local land use permitting decisions – which is unprecedented overreach. NH Gov. Sununu expected to contact Administration for withdrawal of permit. Parties to meet thereafter. **Status:** Request for withdrawal of EPA MS4 permit already under consideration – ADR process likely avenue for relief.

Challenge to PA Nutrient TMDLs Using Junk Science to Impose Unattainable Reduction Mandates(Telford Boro et al v. EPA, ED PA): EPA created stringent nutrient limits for all of Eastern Pennsylvania using methods EPA’s Science Advisory Board stated were not scientifically defensible. The water quality limits EPA created are exceeded in natural background waters in Eastern PA and would require “pre-European” conditions (i.e., reforestation of entire watershed and removal of all human influences) to meet mandated nutrient load reduction requirements. Methods used to devise similar limits in nearby Wissahickon watershed also violate the laws of physics and nature (settling of dissolved substances, and plant growth occurring in the dead of winter and during major storm event when plant growth does not physically occur). EPA also rejected all field studies and peer reviewed literature confirming that plant growth would not be controlled with the proposed nutrient reduction program. **Status:** The Eastern PA communities and municipal trade assn’s will be meeting in end of February to coordinate Congressional assistance on seeking peer review of EPA’s arbitrary mandates. Letter to EPA expected in early March as well as Congressional inquiry.

PS – EPA recently proposed new blue-green algae “toxin” standards to create a basis for regulating phosphorus nationwide to extremely low levels. The analysis is so grossly incorrect and impacts on human health so clearly fabricated, it is embarrassing. Comments on this latest EPA masterpiece are due Feb 17, 2017.

-

Clearly, the New Administration has its hands full.

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: Schnare, David [<mailto:schnare.david@epa.gov>]

Sent: Thursday, January 26, 2017 6:05 PM

To: John Hall

Subject: RE: CRR Letter to New Administration - Request to Immediately Freeze NH Stormwater General Permit Issued by EPA January 18, 2017

John:

Can you send me a timeline and examples of the less than credible science R1 has been using, and that OW has approved. I need context and specifics to approach this issue. It would be very helpful if you cast that briefing in the context of EPA's Information Quality Act guidance. That is the tool I want to see used to pull the agency back into the mainstream.

d.

To: Schnare, David[schnare.david@epa.gov]
From: John Hall
Sent: Fri 3/10/2017 8:50:58 PM
Subject: FW: Death by Nutrients - WEF Presentations
WEF presentation-handouts---death-by-nutrient-3-8-17.pdf

David

Was not sure if you are aware of this one.

This is the type of stuff WEF is doing to promote spending more on nutrient removal to support their vendor/engineering firm interests, at the expense of municipal interests.

<http://www.wef.org/events/webcasts/upcoming-webcasts/DeathByNutrientsWebcast/>

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

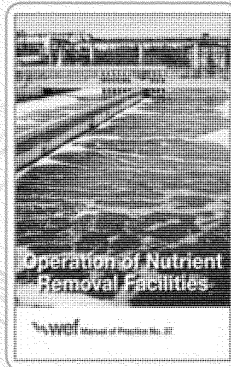
Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

Attendees of the Death by Nutrients webcast receive **20% off *Operation of Nutrient Removal Facilities, MOP 37.***



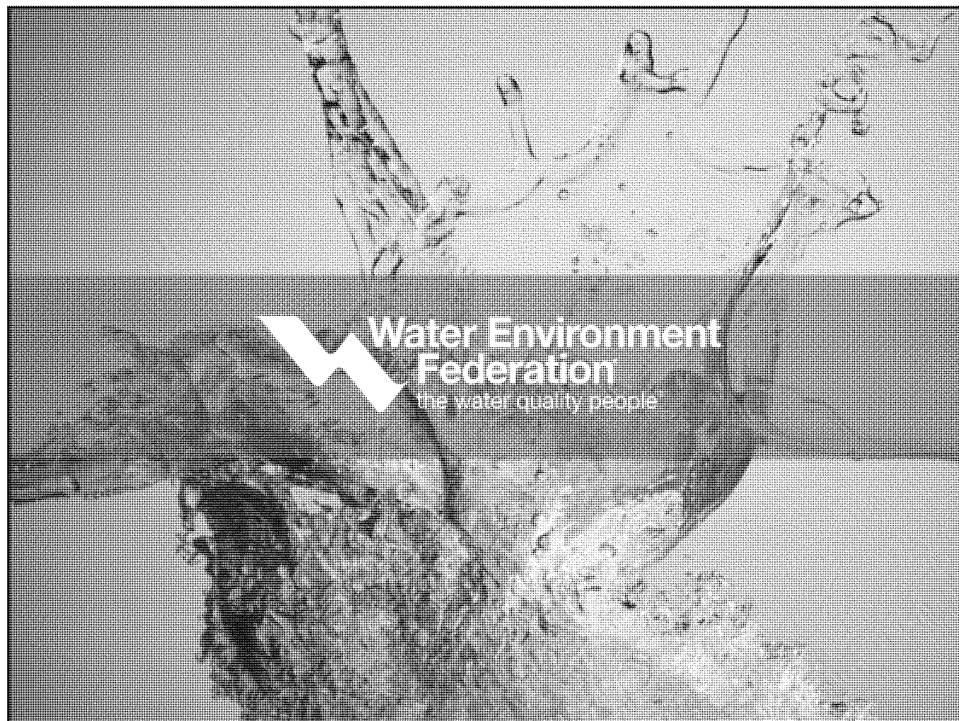
Order No. P130006 (print)
P130006EPUB (e-book)

List: \$135.00 \$108.00
Member: \$108.00 \$86.40

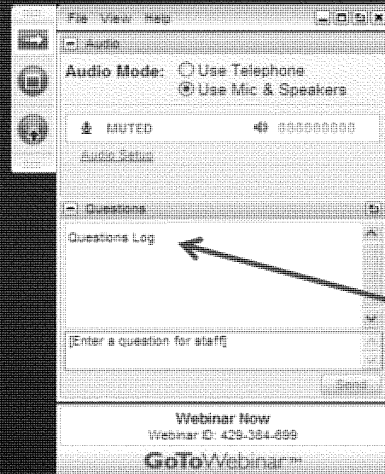
Use promo code WEB at checkout

Offer valid through 3/24/2017

Online: www.wef.org/ShopWEF | **Call:** 1.800.666.0206



How to Participate Today



- **Audio Modes**
 - Listen using Mic & Speakers
 - Or, select "Use Telephone" and dial the conference (please remember long distance phone charges apply).
- Submit your questions using the Questions pane.
- A recording will be available for replay shortly after this webcast.



Death by Nutrients: Toxicity of Ammonia and Harmful Algal Bloom Events

Wednesday, March 8th, 2017

1:00 - 2:30pm Eastern



Today's Moderator

- Tad Slawecky, LimnoTech



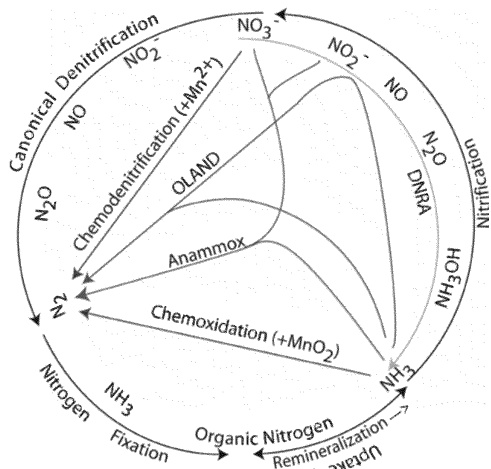
Today's Agenda

- Tom Dupuis, P.E., HDR
- Hans W. Paerl, Ph.D., University of North Carolina, Chapel Hill
- Erin Houghton, M.S., NEW Water: the brand of Green Bay Metropolitan Sewerage District



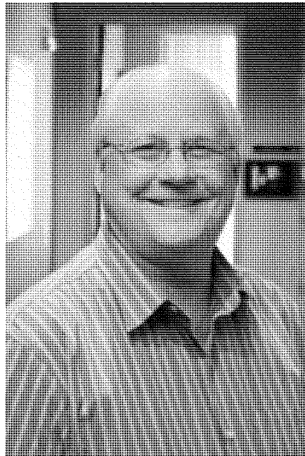


The Nitrogen Cycle



Brandes et al.
Chem. Reviews Vol 107:577-589 (2007)





**Tom Dupuis,
HDR, Boise, ID**

tom.dupuis@hdrinc.com



Understanding Revised Federal Ammonia Criteria

*Impacts on Treatment Requirements, and
Strategies for Implementation in State
Rulemaking*



Acknowledgement

- Previous co-presenters at PNCWA:
 - Dave Clark, HDR Boise
 - Andy McCaskill, HDR Portland



Overview

- History of Federal Ammonia Criteria
- Revised 2013 Federal Ammonia Criteria
- Example of Northwest Ammonia Rulemaking
 - Oregon
- Site Specific Ammonia Criteria and Water Quality Based Effluent Limits
- Example Scenarios
 - Criteria and Effluent Limits
 - Mussels Present
 - Mussels Absent, Early Life Stage Fish Present
 - Mussels Absent, Early Life Stage Fish Absent



Water Quality Based Effluent Limits (WQBELs) for Ammonia

- Can be based on several effects of ammonia in receiving waters:

- ☐ Dissolved oxygen depletion (nitrification in the receiving water)
- ☐ Nutrient effects (algal, plant growth stimulation)
- ☐ Ammonia toxicity

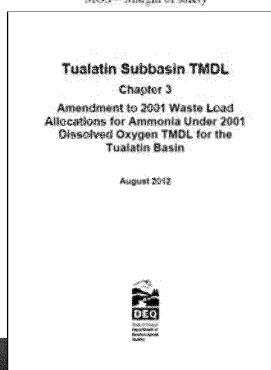
- If more than one of these is applicable, the most restrictive will govern in the NPDES permit

General TMDL Formula
TMDLs generally can be represented using the formula of:

$$TMDL = \sum WLA_s + LA + MOS$$

Equation 5-1. General TMDL Formula.

Where: WLA = Wasteload allocation (to point sources)
LA = Load allocation (to anthropogenic non-point sources and natural background)
MOS = Margin of safety

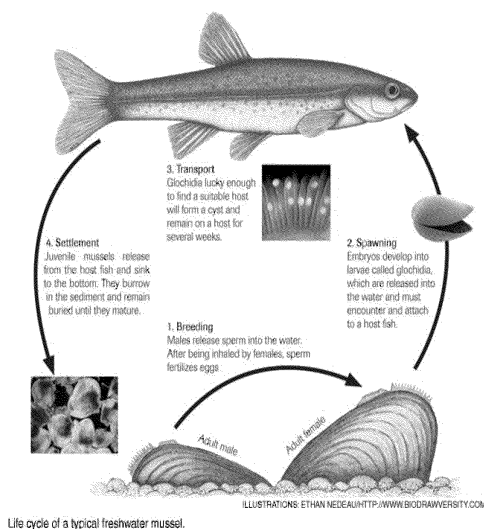


Ammonia Toxicity Criteria / Early History

- Ammonia toxicity to aquatic life:
 - ☐ Unionized fraction of ammonia (NH_3) is toxic
 - ☐ % unionized increases with increasing pH
 - ☐ Increasing temperature also increases toxicity
- EPA recommended criteria history:
 - ☐ 1976 - Redbook (0.02 mg/L NH_3), simple pH and T matrix
 - ☐ 1984 - bifurcated (with or without salmonids), acute and chronic (1986 Goldbook)
 - ☐ 1992 - whitefish correction factor
 - ☐ 1999 - major revision for salmonids, considers early life stages

Note - Not all states adopted or received EPA approval for 1999 criteria (e.g., Oregon)

2004 - Changes are Coming



- EPA notice of intent to re-evaluate aquatic life criteria for ammonia
- Seeks submittal of data on freshwater mussels (Unionids)
- Early life stage that attaches to fish (glochidium)
- Short duration glochidium stage shown to be most sensitive to ammonia

2009 Draft Criteria Reflect Mussel Sensitivity

TABLE 2.2 Comparison of U.S. Environmental Protection Agency recommended ammonia toxicity criteria.*

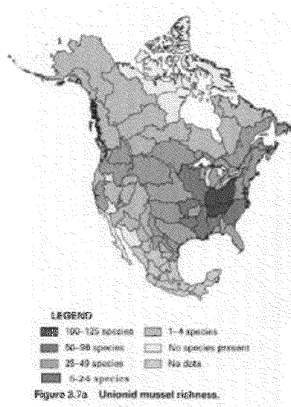
Temperature, °C	1984	1992	1999	Draft 2009	
				Freshwater mussels present	Freshwater r mussels absent
Acute criteria, mg/L as N					
15	12.2	--	13.3	15.6	23.6
20	12.0	--	13.3	10.3	17.8
Chronic criteria, mg/L as N					
15	1.7	2.1	4.2	0.88	6.3
20	1.2	1.5	3.1	0.63	4.6

*All values shown are at a pH of 7.5; 1999 values shown assume salmonids and early life stages present.

Source: WEF MOP #34, Nutrient Removal, 2011

Distribution of Mussels and Snails

- They're Everywhere!
- Highest diversity of freshwater mussels in the world (300 species)
- Declining numbers, water quality is one reason
- 70% of mussels extinct or imperiled

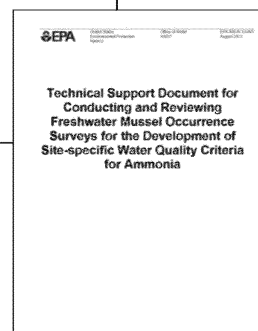
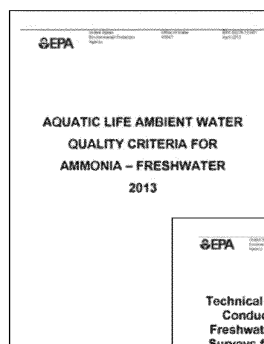


Distribution:
Unionid species richness by ecoregion

Abell et al., 2000
Freshwater ecoregions of North America: a conservation assessment.

Final 2013 Ammonia Criteria Published by EPA

- ***“Aquatic Life Ambient Water Quality Criteria For Ammonia – Freshwater, 2013”***
 - 225 pages with 14 appendices
- ***“Flexibilities for States Applying EPA’s Ammonia Criteria Recommendations”***
 - EPA presents a number of flexibilities available for state consideration including:



Oregon Rulemaking -Ammonia

- Summary of What Was Adopted
 - ☐ Mussels and snails are the most sensitive species
 - ☐ DEQ did not adopt criteria for ammonia based on the absence of snails/mussels; current information indicates that they are (or historically were) present through most of Oregon
 - ☐ DEQ did not preclude the development of site specific criteria
 - ☐ Requires a scientifically robust survey that shows that these sensitive species are not present; requires EPA approval and consultation (NMFS and USFWS).



Reasonable Potential To Exceed Analysis (RPTE, RPA)

- Mass Balance Equation
- Does predicted Receiving Water Concentration (RWC) have the reasonable potential to exceed water quality criteria after allowable mixing?
- If yes, WQBELs are established in the NPDES permit.
 - Mass Balance Equation

$$RWC = \frac{(Q_e * C_e) + (Q_r * C_r)}{(Q_e + Q_r)}$$



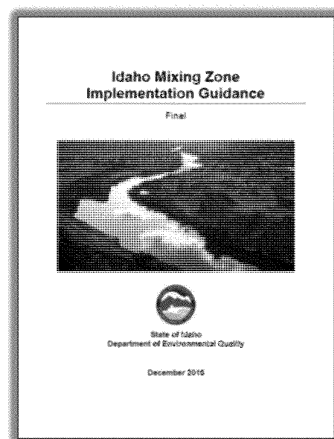
Wasteload Allocation for Single Discharger Situation

Mass Balance Equation

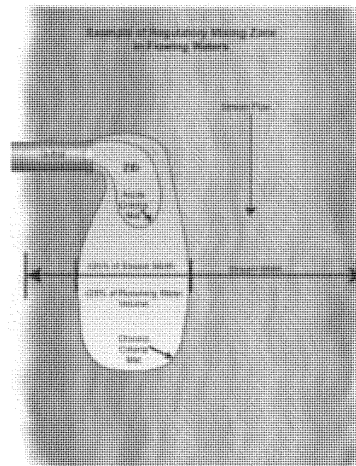
$$WLA = \frac{WQC * (Q_e + (Q_r * M)) - (C_r * Q_r * M)}{Q_e}$$

Where:		
WLA	=	The wasteload allocation for a point source discharge; calculated separately for each type of WQC (i.e., acute, chronic, human health, etc.), concentration
WQC	=	Water quality criterion, concentration
Q _e	=	Effluent design flow
Q _r	=	Receiving water design flow
C _r	=	Background concentration in the receiving water
M	=	Fraction of receiving water flow allowed for mixing
Types of WLAs include:		
WLA _a	=	WLA for aquatic life acute WQC
WLA _c	=	WLA for aquatic life chronic WQC
WLA _h	=	WLA for human health WQC

States Have Mixing Zone Rules and Guidance



Idaho Guidance Illustration



EPA Technical Support Document WQBELs for Toxics

$LTA_{12} = WLA_{12} \times \text{EXP}(0.5\sigma^2 - Z_{99}\sigma)$ $LTA_{30} = WLA_{30} \times \text{EXP}(0.5\sigma^2 - Z_{99}\sigma)$		WLA to Long Term Average (LTA)
Where:		
EXP	=	Base e (or approximately 2.718) raised to the power shown between the parentheses
σ^2	=	$\text{LN}(\text{CV}^2 + 1)$
σ	=	Square root of σ^2
σ_{12}^2	=	$\text{LN}(\text{CV}^2/n) + 1$
σ_{12}	=	Square root of σ_{12}^2
Where:		
LN	=	Natural logarithm (base e)
CV	=	Coefficient of variation = s/m
Where:		
m	=	Mean of samples above the MDL in data set = $\sum X_i/k$
s	=	Standard deviation of the samples above the MDL in data set = $[\sum (X_i - m)^2 / (k-1)]^{0.5}$
X_i	=	Each individual data point
k	=	Total number of samples in data set
n	=	4 for 4-day chronic criteria, and 30 for 90-day chronic criteria
Z_{99}	=	Z score for the 99th percentile probability basis
$\text{MDL} = LTA_{12} \times \text{EXP}(Z_{99}\sigma - 0.5\sigma^2)$ $\text{AML} = LTA_{30} \times \text{EXP}(Z_{99}\sigma - 0.5\sigma^2)$		
Where:		
EXP	=	Base e (or approximately 2.718) raised to the power shown between the parentheses
σ^2	=	$\text{LN}(\text{CV}^2 + 1)$
σ	=	Square root of σ^2
σ_{12}^2	=	$\text{LN}(\text{CV}^2/n) + 1$
σ_{12}	=	Square root of σ_{12}^2
Where:		
CV	=	Coefficient of variation = s/m
m	=	Mean of samples above the MDL in data set = $\sum X_i/k$
s	=	Standard deviation of the samples above the MDL in data set = $[\sum (X_i - m)^2 / (k-1)]^{0.5}$
X_i	=	Each individual data point
k	=	Total number of samples in data set
LN	=	Natural logarithm (base e)
n	=	number of samples per month
Z_{99}	=	Z score for the 99th percentile probability basis = 2.326
Z_{95}	=	Z score for the 95th percentile probability basis = 1.645

LTA to WQBELs,
Max. Day and
Average Monthly
Limits
(MDL and AML)

Impact on Permit Limits

• “Flexibilities for States Applying EPA’s Ammonia Criteria Recommendations”

- ☐ EPA presents a number of flexibilities available for state consideration including:
 1. Recalculation Procedure for Site-specific Criteria Derivation

Example Scenarios

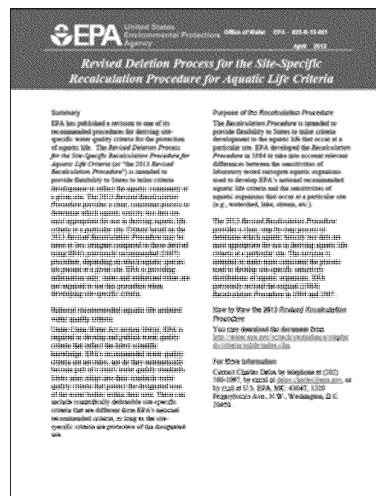
- 2013 Revised Federal Ammonia Criteria
 - ☐ 2013 v. 1999 Ammonia Criteria
 - ☐ Mussels Present
- Site Specific Criteria
 - ☐ Mussels Absent, Early Life Stage Fish Present
 - ☐ Mussels Absent, Early Life Stage Fish Absent

Site Specific Criteria

EPA Approved Methods

- The Recalculation Procedure, a taxonomic composition adjustment (revised in 2013).
- 2. The Indicator Species Procedure, a bioavailability adjustment now called the Water-Effect Ratio Procedure. [Biotic Ligand Model alternative]
- 3. The Resident Species Procedure, a little-used approach effectively superseded by combined application of the Recalculation and Water-Effect Ratio Procedures.

2013 Ammonia Recalculation Guidance



Example Scenarios Analysis Assumptions for RPA and Effluent Limits Calculations

- Scenarios
 - ☐ A Medium Discharge, Small Stream
 - ☐ B Medium Discharge, Medium River
- Reasonable Potential Analysis
 - ☐ All Example Scenarios Have Reasonable Potential for Exceedance
 - ☐ Regulatory Agency Spreadsheet Calculators Used for Analysis
- Effluent Limits Calculations
 - ☐ All Example Scenarios Result in Low Limits
 - ☐ 95th Percentile: Average Monthly Limit (AML)
 - ☐ 99th Percentile - Max Daily Limit (MDL)



Scenario A: Medium Discharger to Small Stream

- Treatment Plant
 - Max Day 10.2 mgd
- Receiving Water
 - 7Q10: 24 cfs



- Temperature: 22°C
- pH: 8.8



Scenario A: Medium Discharger to Small Stream Ammonia Criteria

Criteria	Chronic	% Change	Acute	% Change	Remarks
Current	0.41	--	1.23	--	Baseline
2013 EPA Revised Federal Ammonia Criteria					
Mussels Present, ELS Fish Present	0.19	-54%	0.73	-41%	More Stringent
Mussels Absent, ELS Fish Present	0.70	+70%	1.23	0%	Fish Control
Mussels Absent and Fish Absent	0.70	+70%	1.92	+56%	More Lenient



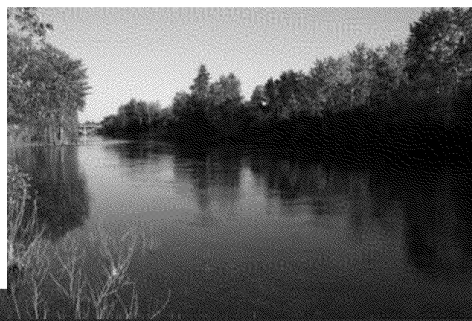
Scenario A: Medium Discharger to Small Stream Effluent Ammonia Limits

Criteria	Monthly, mg/L	% Change	Daily, mg/L	% Change	Remarks
Current	0.31	--	1.26	--	Baseline
2013 EPA Revised Federal Ammonia Criteria					
Mussels Present, Fish Present	0.17	-45%	0.69	-45%	Lower Limits
Mussels Absent, Fish Present	0.31	0%	1.27	0%	Reverts to Current
Mussels Absent and Fish Absent	0.49	+58%	1.99	+58%	Relaxed Limits



Scenario B: Medium Discharger to Medium River

- Treatment Plant
 - Max Day 8.5 mgd
- Receiving Water
 - 7Q10: 573 cfs
 - Temperature: 18.1°C
 - pH: 8.1



Scenario B: Medium Discharger to Medium River Ammonia Criteria

Criteria	Chronic	% Change	Acute	% Change	Remarks
Current	1.77		5.00		Baseline
2013 EPA Revised Federal Ammonia Criteria					
Mussels Present, Fish Present	0.80	-55%	4.08	-18%	More Stringent
Mussels Absent, Fish Present	2.44	+38%	5.01	0%	Similar to Current
Mussels Absent and Fish Absent	3.02	+71%	7.82	+56%	More Lenient



Water Environment
Federation
the water quality people®

Scenario B: Medium Discharger to Medium River Effluent Ammonia Limits

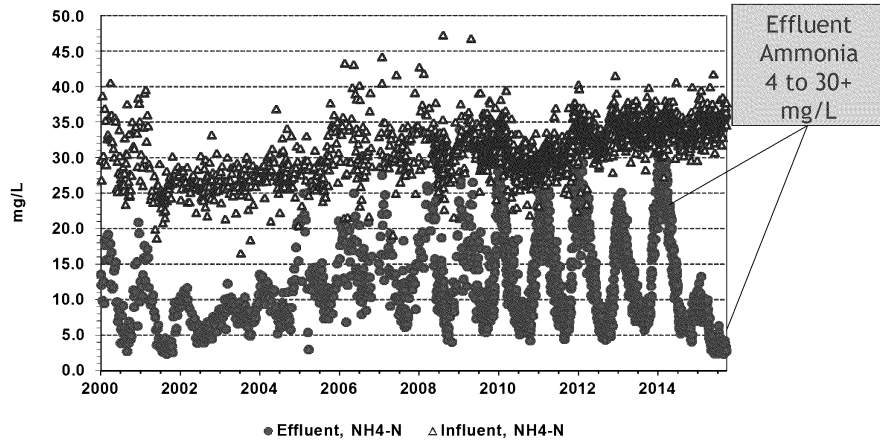
Criteria	Monthly, mg/L	% Change	Daily, mg/L	% Change	Remarks
Current	2.52		10.25		Baseline
2013 EPA Revised Federal Ammonia Criteria					
Mussels Present, Fish Present	2.05	-19%	8.31	-19%	Lower Limits
Mussels Absent, Fish Present	2.53	0%	10.28	0%	Reverts to Current
Mussels Absent and Fish Absent	3.99	+58%	16.2	+58%	Relaxed Limits



Water Environment
Federation
the water quality people®

Effluent Ammonia Treatment Performance

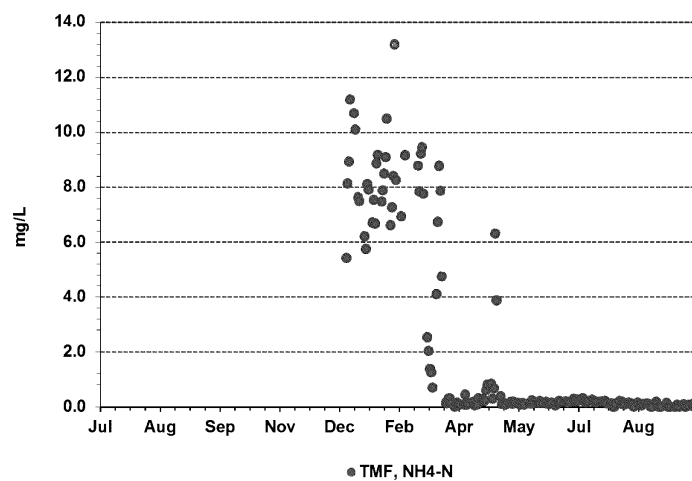
Seasonal Nitrification with Lenient Limits (Summer < 10 mg/L)



Water Environment
Federation
the water quality people

Effluent Ammonia Treatment Performance

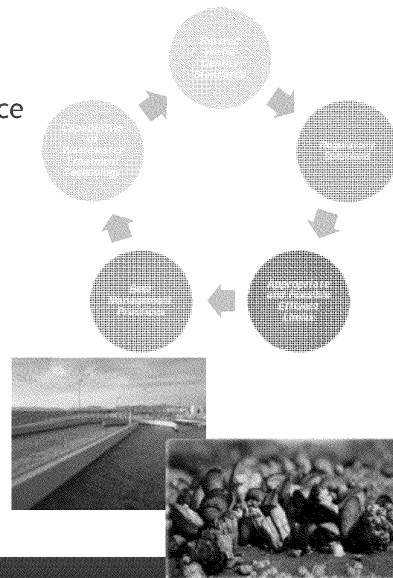
Nitrifying Tertiary Membrane



Water Environment
Federation
the water quality people

Addressing Potential Ammonia Effluent Limits

- Treatment Technology
 - ☐ Evaluate Current Plant Performance
 - ☐ Evaluate How Permit Limits will Change
- Site Specific Criteria
 - ☐ Consider Mixing Zone and Dilution Analyses
 - ☐ Revised Federal Criteria Provide Flexibility



Water Environment
Federation
the water quality people

Questions?

Water Environment
Federation
the water quality people



Cyanobacterial Harmful Blooms (CyanoHABs): Symptomatic of human and climatic alteration of aquatic environments

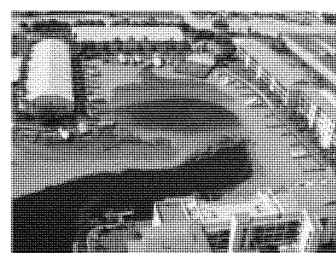
Urban, agricultural and industrial expansion

Increasing nutrient (Nitrogen & Phosphorus) inputs

Water use and hydrologic modification play roles

Climate (change) plays a key interactive role

Blooms are intensifying and spreading

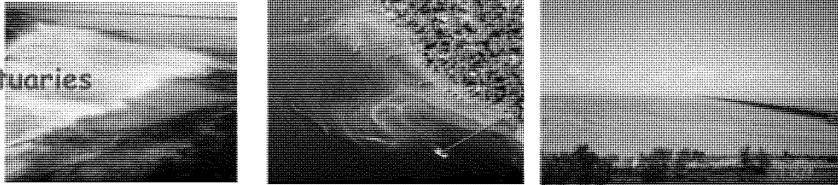


It's a global problem

- Freshwater Ecosystems (lakes, reservoirs, rivers)



- Estuaries

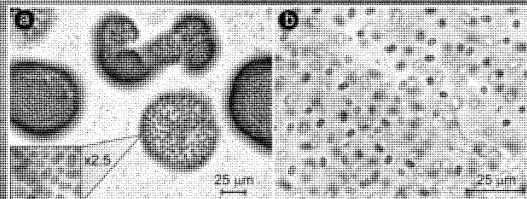


- Coastal waters & seas

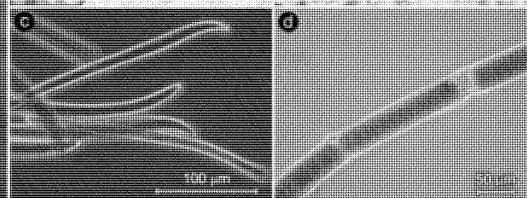


The CyanoHAB "Players"

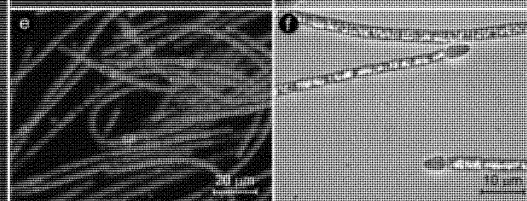
Solitary,
unicellular
(e.g. *Microcystis*,
Planktolyngbya,
Microcystis)



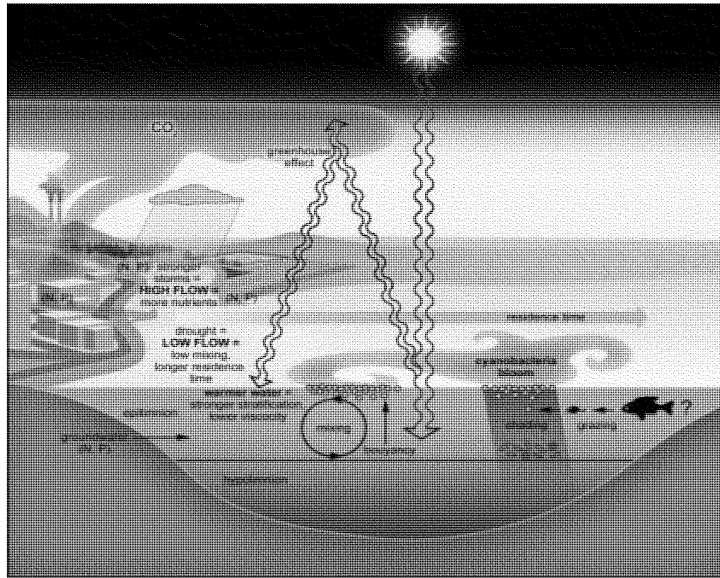
Filamentous, non-
heterocystous
(e.g. *Lyngbya*,
Oscillatoria).
Some species fix N_2



Filamentous,
heterocystous
(e.g. *Anabaena*,
Nodularia,
Cylindrospermopsis).
All fix N_2

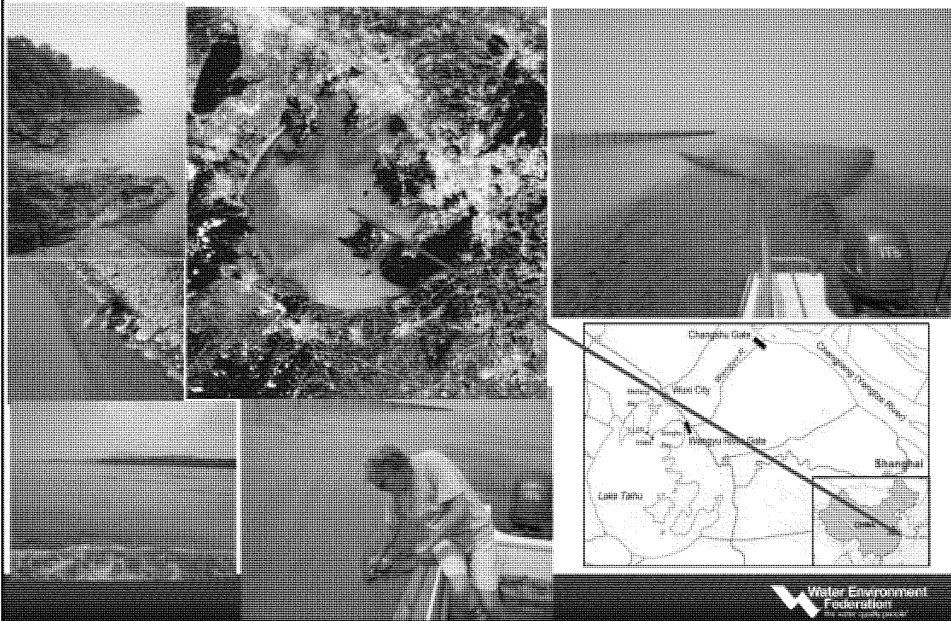


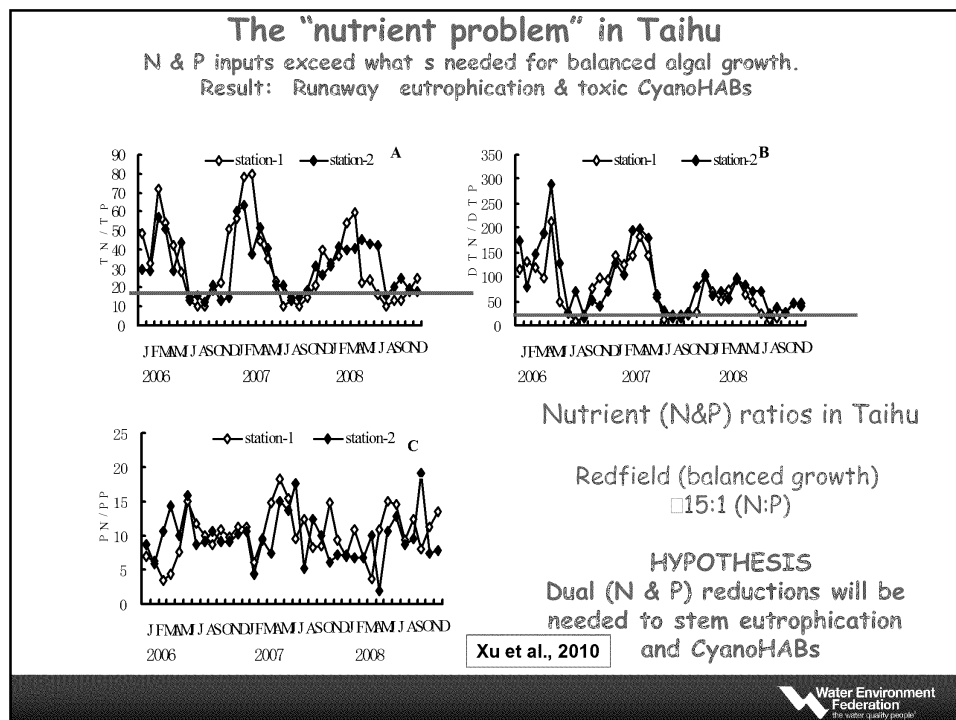
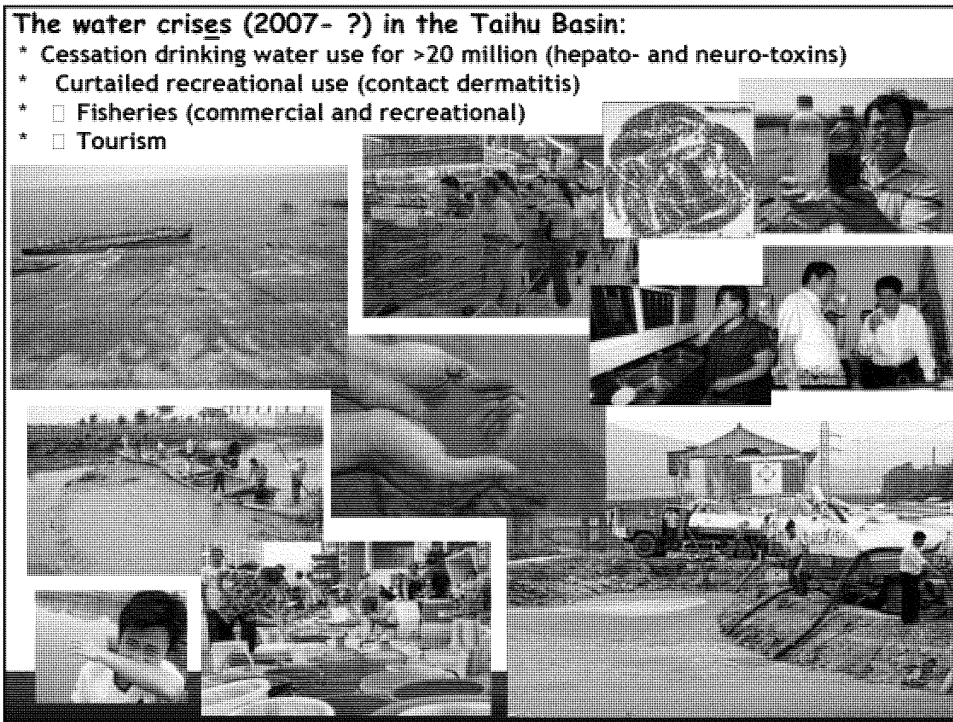
What Controls CyanoHABs? Interacting Physical, Chemical & Biotic Factors



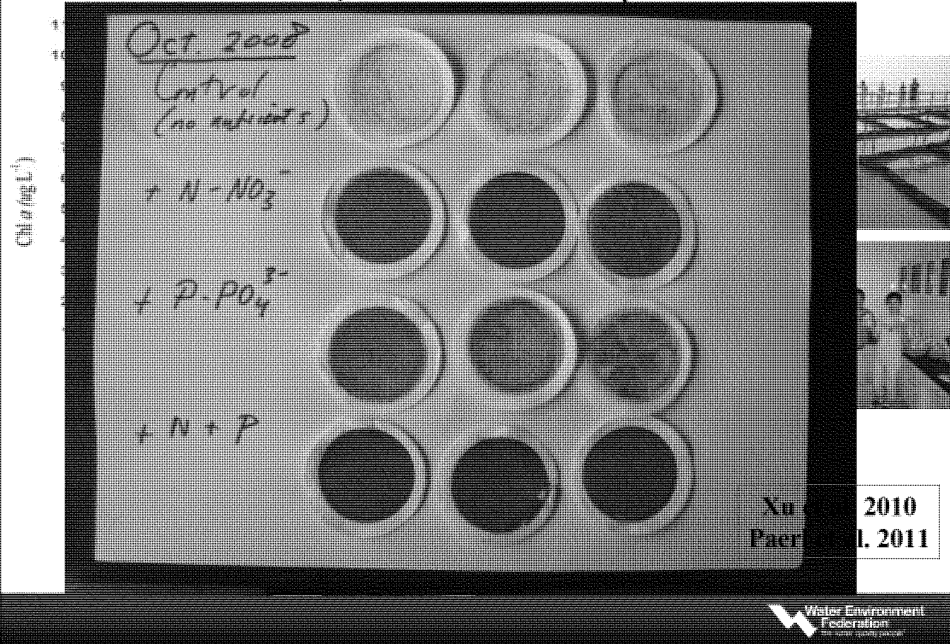
Water Environment Federation
the water quality people

The "poster child": Lake Taihu 3rd largest lake in China. Nutrients (Lots!) associated with unprecedented human development in the Taihu Basin (Jiangsu Province).
Results: Cyano blooms have increased to "pea soup" conditions within a few decades

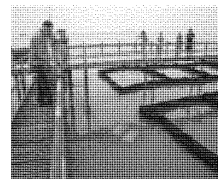
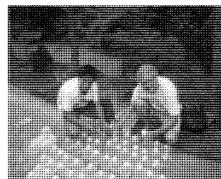
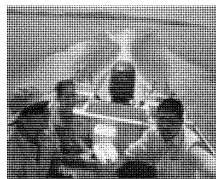




Effects of nutrient (N & P) additions on phytoplankton production (Chl a) in Lake Taihu, China: **Both N & P inputs matter!!**



Using nutrient dilution bioassays to determine N&P reductions needed to control blooms



Sampling

Distribution

Nutrient addition

Incubation

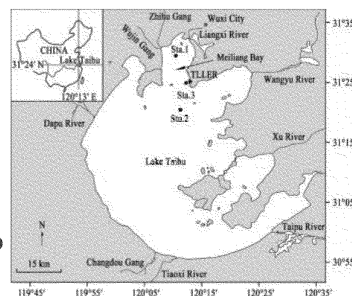
Nutrient dilution bioassays:

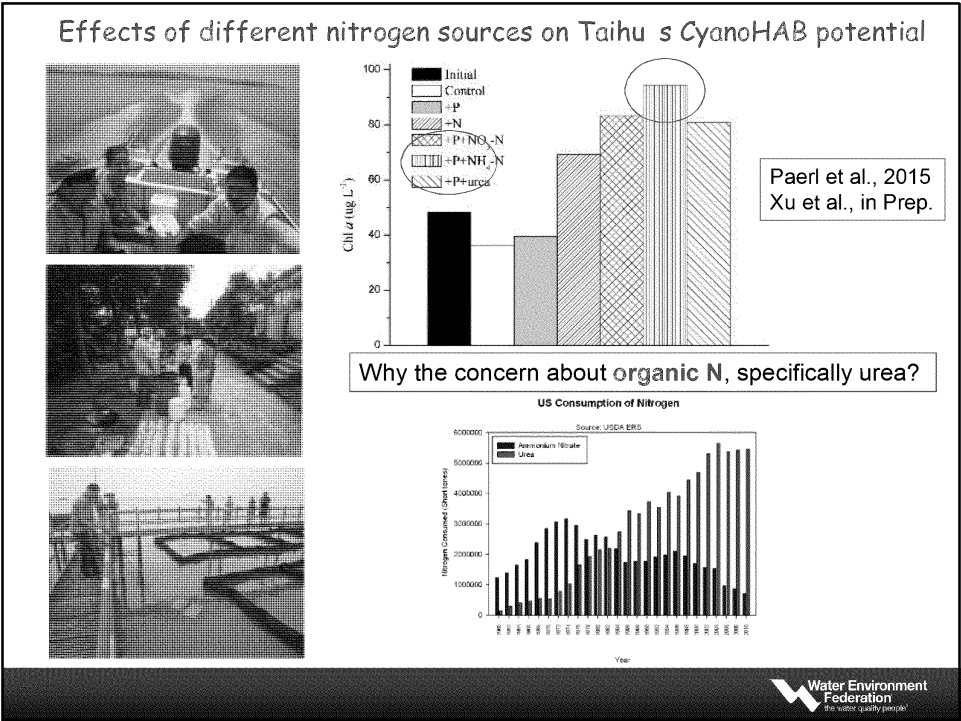
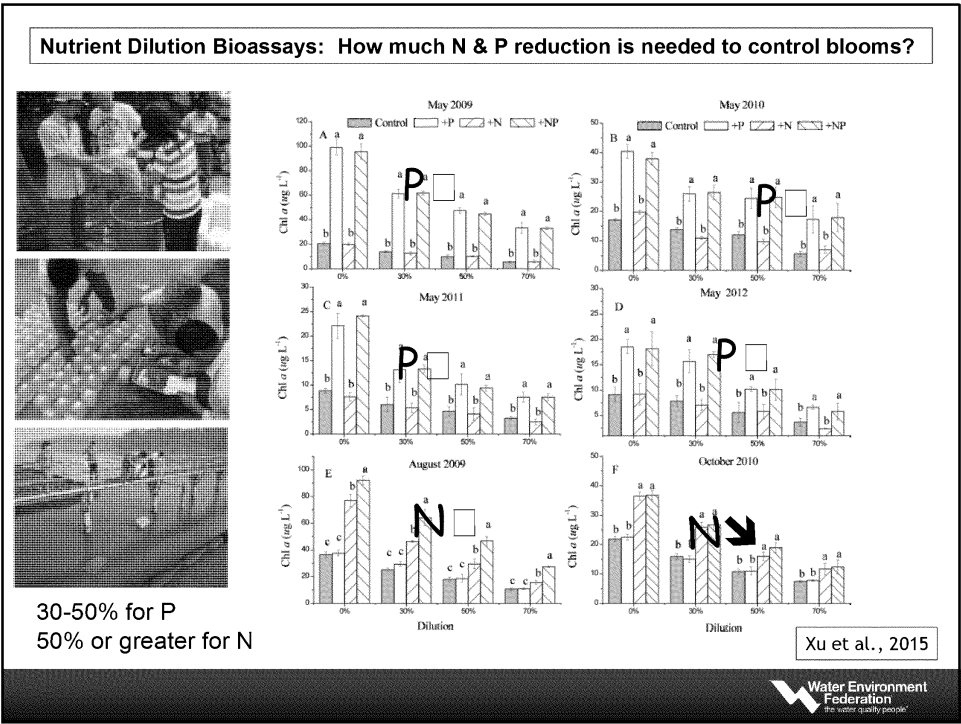
1. 0% (lake water, no dilution)
2. 30% dilution
3. 50% dilution
4. 70% dilution

N was added as KNO_3 , and P was added as $\text{K}_2\text{HPO}_4 \cdot 3\text{H}_2\text{O}$.

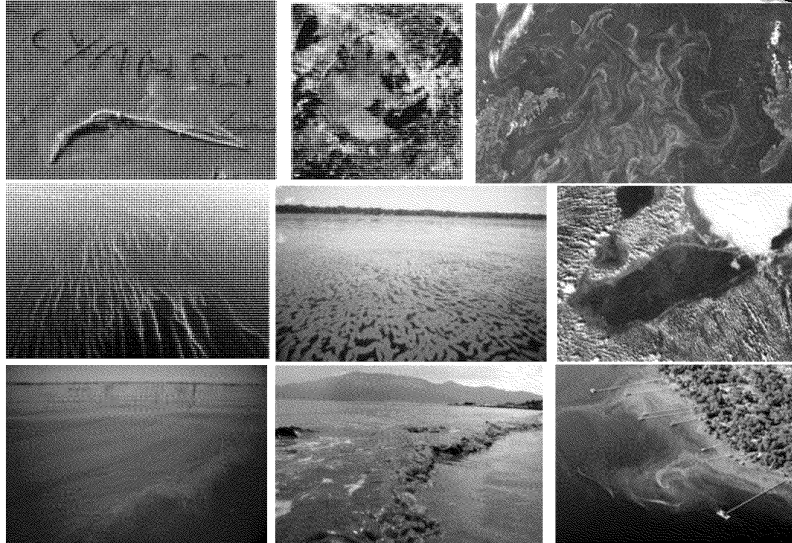
Containers were incubated in the surface water to maintain ambient conditions.

Xu et al., 2015





Is Taihu a “looking glass” for eutrophying large lake and coastal ecosystems worldwide?

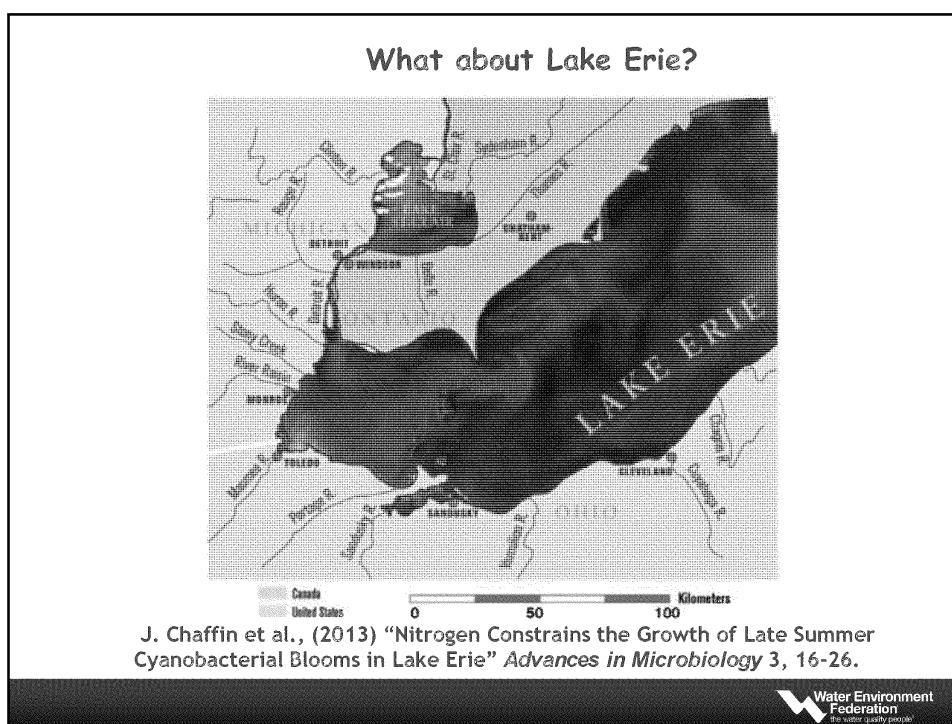
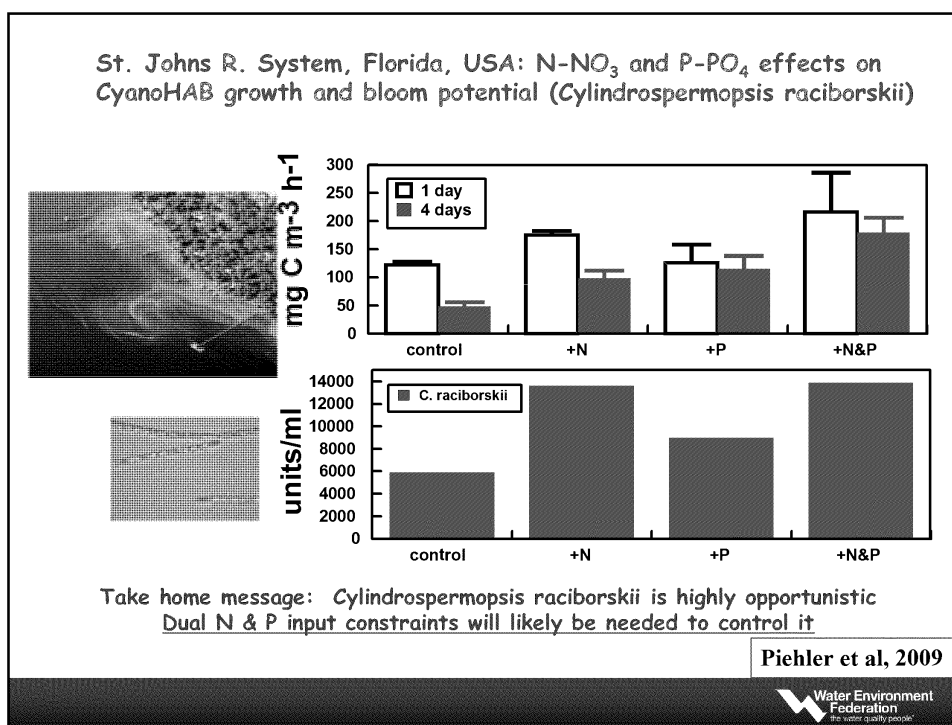


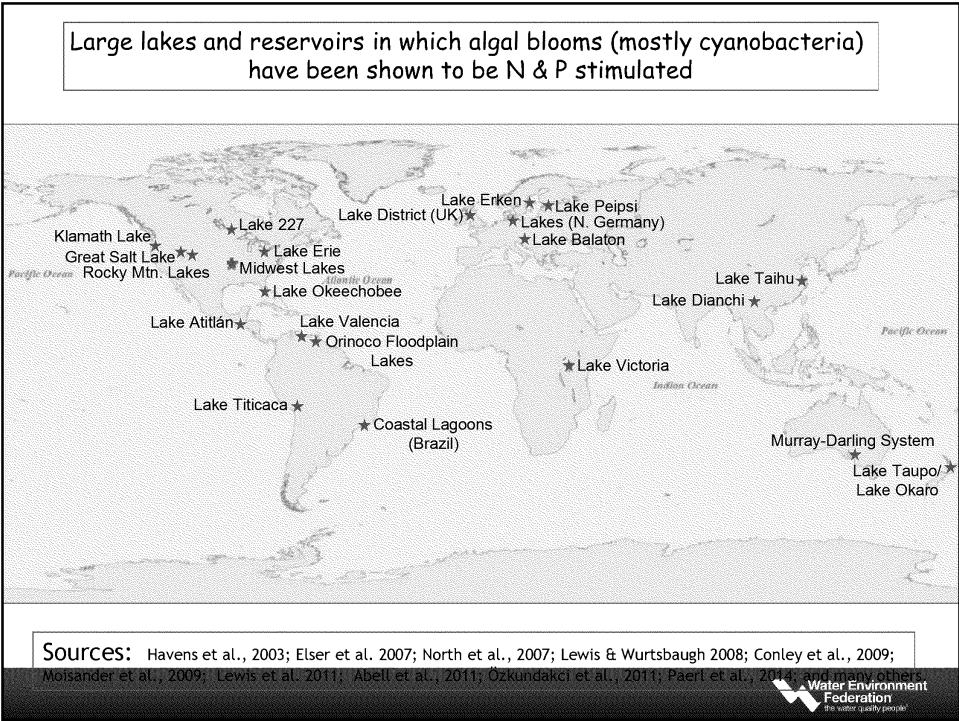
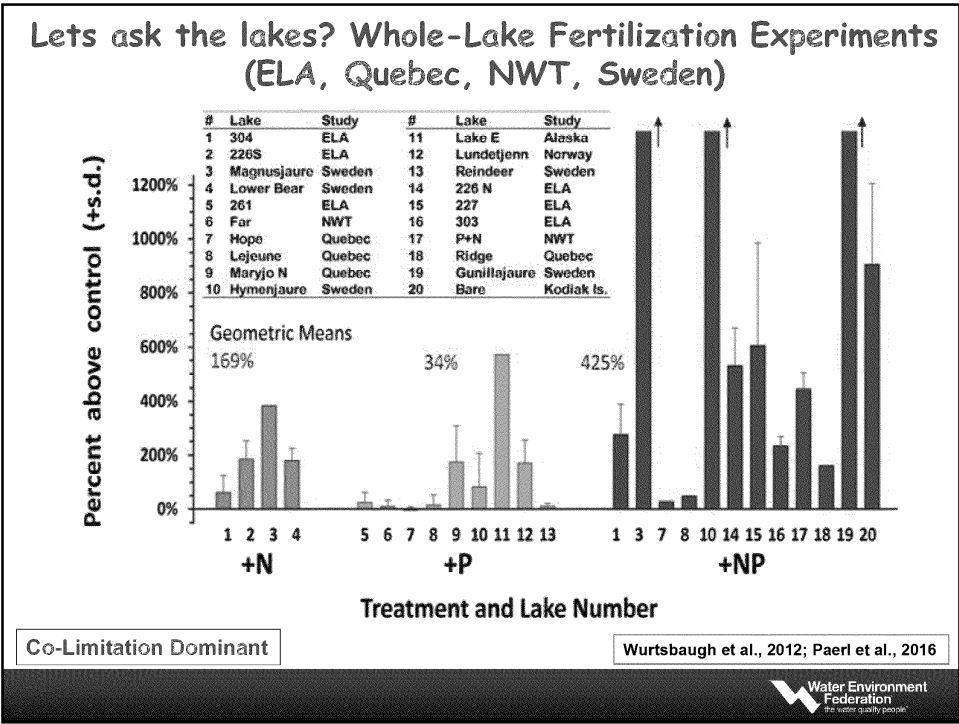
**Water Environment
Federation**
the 'water quality people'

Florida lakes. *Cyprinus carpio* (goldfish), rapidly
poisoned by toxic cyanide (cyanide AB)

- High P uptake and storage capacity
- High NH_4^+ uptake affinity (competes well for N)
 - N additions ($\text{NO}_3^- + \text{NH}_4^+$) often significantly increase growth (chl *a* and cell counts) and productivity
- N_2 fixer (can supply its own N needs)
- Tolerates low light intensities
 - Eutrophication/decreased transparency favors *Cylindrocapsa* in water column with other cyano

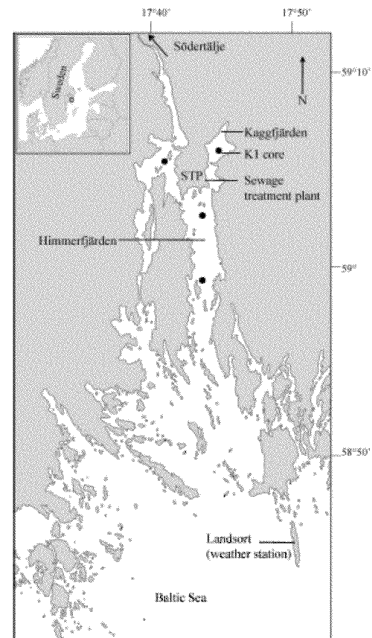
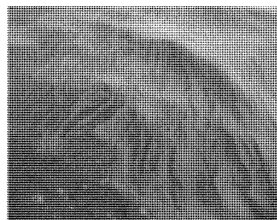






**Nutrient load and
phytoplankton (dominated by
cyanobacteria) growth response
in Himmerfjärden, Sweden**

Courtesy: Ulf Larsson & Ragnar Elmgren
Stockholm University

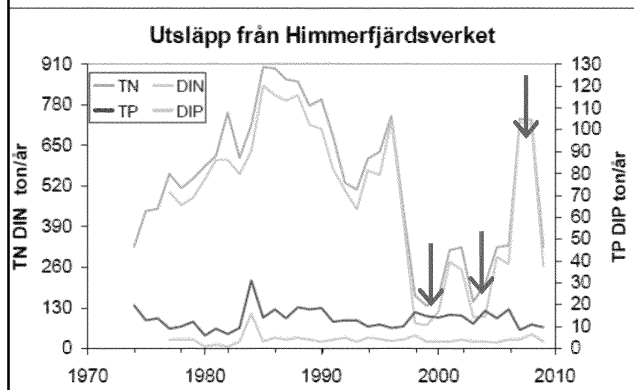


Water Environment
Federation
"the water quality people"

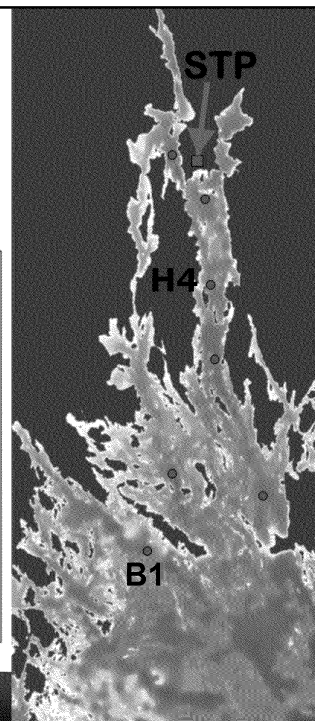
The Himmerfjärden case: Baltic ooastal area
with large Sewage treatment plant,
P removal since 1976
N removal started in 1993 (50%) & 2000 (80%).
No N removal 2004-2008

EFFECTS ON PHYTOPLANKTON (Chl a)?

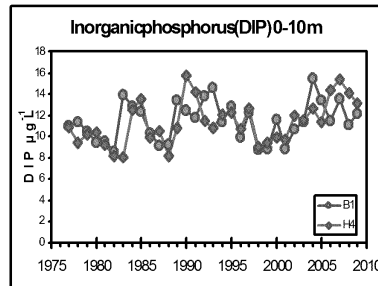
Plant loads , tonnes/ year



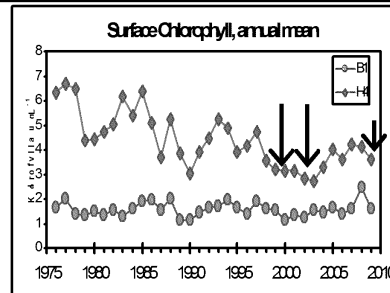
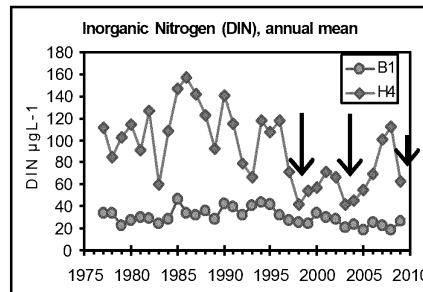
B1 = Reference station



The results: Reducing DIN inputs reduced Chl a



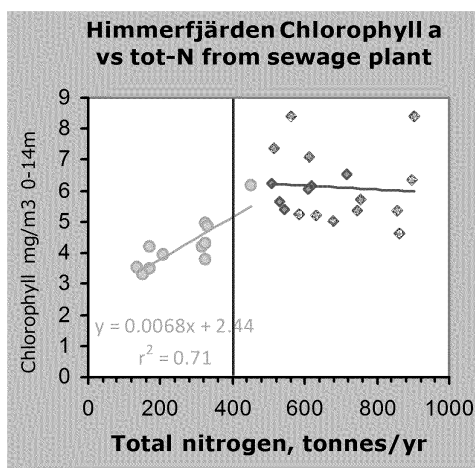
Larsson and Elmgren, 2012



Water Environment
Federation
the water quality people

Developing a N loading-bloom threshold

Stockholm
University



**Lowering nitrogen
discharge below 400
tonnes/yr clearly
reduced local
phytoplankton biomass.**

Source:
Ulf Larsson, pers.comm.

Water Environment
Federation
the water quality people

Why does N limitation persist in eutrophic systems? N_2 losses from shallow eutrophic systems exceed "new" N inputs via N_2 fixation

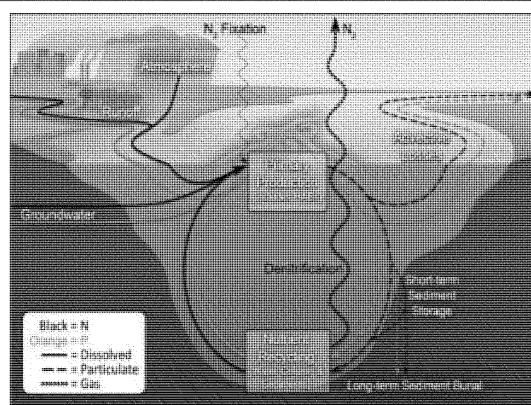
Annual estimates of ecosystem N_2 fixation, denitrification, and net ecosystem N_2 flux in lakes.

Location	N_2 Fixation (g N m ⁻² yr ⁻¹)	Denitrification (g N m ⁻² yr ⁻¹)	Net N_2 Flux (g N m ⁻² yr ⁻¹) ¹
Lake 227 (ELA) ²	0.5	5-7	-6.5 – -4.5
Lake Mendota ²	1.0	1.2	-0.2
Lake Okeechobee ²	0.8 – 3.5	0.3 – 3.0	-2.2 – 0.5
Lake Erken ²	0.5	1.2	-0.7
Lake Elmdale	10.4 ³	18 ⁴	-7.6
Lake Fayetteville	10.6 ³	23 ⁴	-12.4
Lake Wedington	7.0 ³	12 ⁴	-5.0

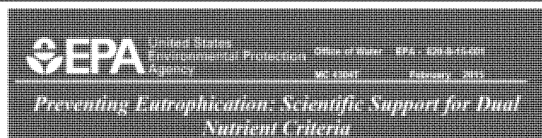
¹Net negative N_2 flux represents reactive N loss, positive represents gain; ²Paerl and Scott (2010); ³J.T. Scott (unpublished data); ⁴Grantz et al. (2012)

- Conclusions:**
1. N_2 fixation does NOT meet ecosystem N demands
 2. More N inputs will accelerate eutrophication
 3. We Gotta get serious about controlling N (as well as P) !!

Conclusion: N limitation is pervasive in aquatic ecosystems, even ones receiving anthropogenic N enrichment

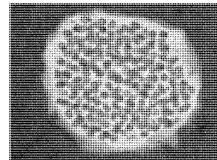
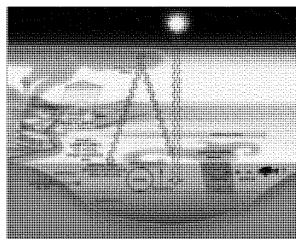


Bottom line: Need to reduce N along with P to control eutrophication and bloom formation



Conclusions/Recommendations

- Reduce both N & P inputs (often by >30%)
 - Nutrient-bloom threshold are system-specific
 - May need to reduce N and P inputs even more in a warmer world
- Impose nutrient input restrictions year-round
 - Residence time is long in many lakes (usually > 6 months)
 - Warmer, longer growing seasons



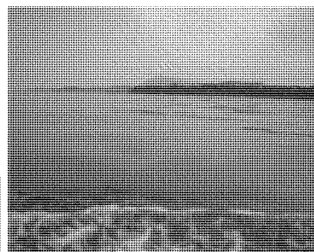
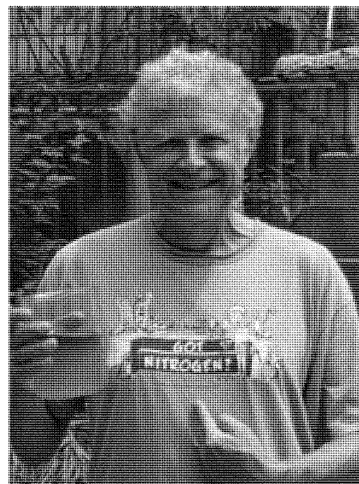
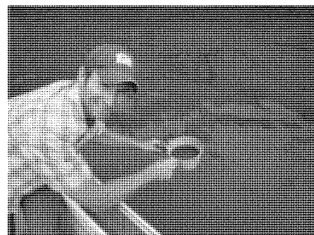
Water Environment
Federation
the water quality people®

Thanks!!

www.unc.edu/ims/paerllab/research/cyanohabs/


Thanks to:

A. Joyner
T. Otten
B. Peierls
B. Qin
M. Piehler
K. Rossignol
S. Wilhelm
H. Xu
G. Zhu
TLLER crew




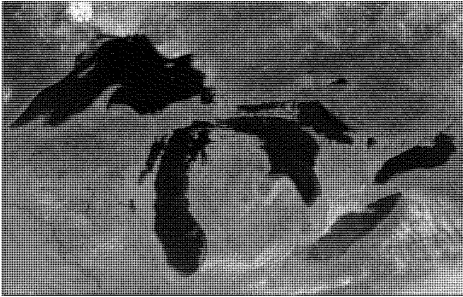
Additional support: Nanjing Instit. of Geography and Limnology,
Chinese Academy of Sciences NIGLAS

Water Environment
Federation
the water quality people®




Erin Houghton, M.S.
*Watershed Specialist
 NEW Water: the brand of Green Bay
 Metropolitan Sewerage District*






Take-a-ways

- Nitrogen in our effluent has direct ecological effects
- Wastewater treatment plants can go beyond the end of their pipe
- Phosphorus may not be the only nutrient of concern



Nitrogen Toxicity: from Effluent to Ecology

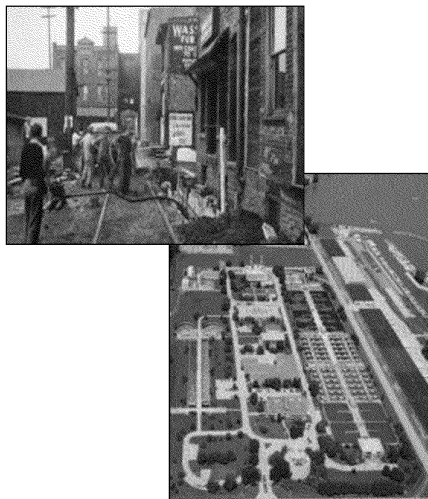
March 8, 2017



NEW Water:

the brand of Green Bay Metropolitan Sewerage District

- Serving customers since 1931
 - First plant built in 1935
 - Added De Pere facility in 2008
- Wholesaler of wastewater services for 18 municipalities
- Currently treat 38 million gallons of wastewater a day
 - Two facilities:
 - Green Bay Facility (30 mgd, 113,600 m³)
 - De Pere Facility (8 mgd, 30,280 m³)
- Nationally recognized, multiple award-winning effluent
 - 14 Years straight of compliance
- 5-member Board of Commissioners



Water Environment
Federation
the water quality people®

Ammonia Toxicity and Treatment

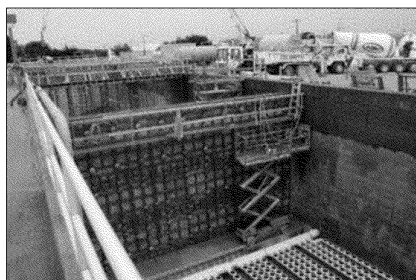
- Revised 2013 Federal Ammonia Criteria
 - Protect sensitive freshwater mussels and snails
 - WI has not yet adopted
- Lake Michigan/Green Bay
 - Invasive dreissenid mussels have outcompeted native unionids
 - Fox River and lower Green Bay are heavily impaired waterways
- Nitrogen in our WPDES permit
 - Ammonia is the only Nitrogen component limited
 - Follow weekly and monthly limits that change with the time of year
 - WQBEL not necessary at this time
 - Optimize removal of ammonia within the capabilities of wastewater treatment plant



Water Environment
Federation
the water quality people®

Ammonia Toxicity and Treatment

- Green Bay Facility Upgrades
 - Goal: improve P & N biological breakdown
 - Increased the size of our hypoxic or anaerobic zone
 - Decreased aeration size and installed new diffusers
 - Increased anaerobic interaction time from 20 min -> 1hr
- Treatment Process and effluent are monitored as part of our state permit
 - Some nutrient speciation work has been done on Phosphorus
 - Future speciation work on Nitrogen is being discussed

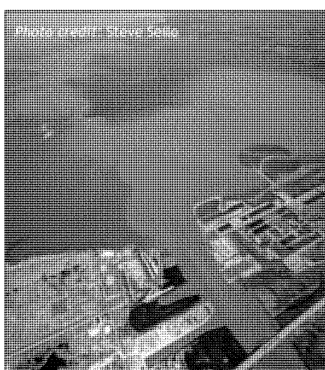


Water Environment
Federation
the water quality people®

Regional Water Quality Issues

- **TOTAL MAXIMUM DAILY LOAD(TMDL):**
 - Lower Fox River & Lower Green Bay
 - For Total Phosphorus & Total Suspended Solids
 - By WI Department of Natural Resources & US Environmental Protection Agency

- **AREA OF CONCERN (AOC):**
 - Lower Green Bay & Fox River
 - By International Joint Commission & US Environmental Protection Agency



- **EXCESS NUTRIENTS & SEDIMENT RUNOFF:**
 - Push to address non-point source inputs

- **Harmful Algal Blooms (HABs):**
 - Seeing large cyanobacteria blooms dominate over desired algal species
 - Can produce toxins

- **DEAD ZONE:**
 - Green Bay: Mid to lower bay
 - Hypoxic and anoxic bottom water
 - Highly eutrophic water brings large amount of organic material consumed by benthic organisms that breathe O2 and respire CO2

Water Environment
Federation
the water quality people®

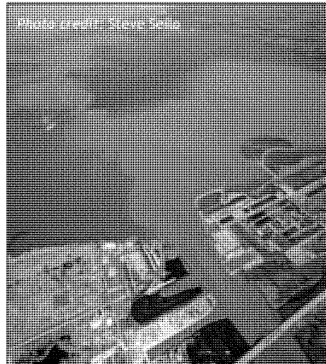
Regional Water Quality Issues

- **TOTAL MAXIMUM DAILY LOAD(TMDL):**

- Lower Fox River & Lower Green Bay
- For Total Phosphorus & Total Suspended Solids
- By WI Department of Natural Resources & US Environmental Protection Agency

- **AREA OF CONCERN (AOC):**

- Lower Green Bay & Fox River
- By International Joint Commission & US Environmental Protection Agency



- **EXCESS NUTRIENTS & SEDIMENT RUNOFF:**

- Push to address non-point source inputs

- **Harmful Algal Blooms (HABs):**

- Seeing large cyanobacteria blooms dominate over desired algal species
- Can produce toxins

- **DEAD ZONE:**

- Green Bay: Mid to lower bay
- Hypoxic and anoxic bottom water
- Highly eutrophic water brings large amount of organic material consumed by benthic organisms that breathe O₂ and respire CO₂



Regional Water Quality Issues

- **TOTAL MAXIMUM DAILY LOAD(TMDL):**

- Lower Fox River & Lower Green Bay
- For Total Phosphorus & Total Suspended Solids
- By WI Department of Natural Resources & US Environmental Protection Agency

- **AREA OF CONCERN (AOC):**

- Lower Green Bay & Fox River
- By International Joint Commission & US Environmental Protection Agency



- **EXCESS NUTRIENTS & SEDIMENT RUNOFF:**

- Push to address non-point source inputs

- **Harmful Algal Blooms (HABs):**

- Seeing large cyanobacteria blooms dominate over desired algal species
- Can produce toxins

- **DEAD ZONE:**

- Green Bay: Mid to lower bay
- Hypoxic and anoxic bottom water
- Highly eutrophic water brings large amount of organic material consumed by benthic organisms that breathe O₂ and respire CO₂



Regional Water Quality Issues

- **TOTAL MAXIMUM DAILY LOAD(TMDL):**

- Lower Fox River & Lower Green Bay
- For Total Phosphorus & Total Suspended Solids
- By WI Department of Natural Resources & US Environmental Protection Agency

- **AREA OF CONCERN (AOC):**

- Lower Green Bay & Fox River
- By International Joint Commission & US Environmental Protection Agency



- **EXCESS NUTRIENTS & SEDIMENT RUNOFF:**

- Push to address non-point source inputs

- **Harmful Algal Blooms (HABs):**

- Seeing large cyanobacteria blooms dominate over desired algal species
- Can produce toxins

- **DEAD ZONE:**

- Green Bay: Mid to lower bay
- Hypoxic and anoxic bottom water
- Highly eutrophic water brings large amount of organic material consumed by benthic organisms that breathe O2 and respire CO2



Regional Water Quality Issues

- **TOTAL MAXIMUM DAILY LOAD(TMDL):**

- Lower Fox River & Lower Green Bay
- For Total Phosphorus & Total Suspended Solids
- By WI Department of Natural Resources & US Environmental Protection Agency

- **AREA OF CONCERN (AOC):**

- Lower Green Bay & Fox River
- By International Joint Commission & US Environmental Protection Agency



- **EXCESS NUTRIENTS & SEDIMENT RUNOFF:**

- Push to address non-point source inputs

- **Harmful Algal Blooms (HABs):**

- Seeing large cyanobacteria blooms dominate over desired algal species
- Can produce toxins

- **DEAD ZONE:**

- Green Bay: Mid to lower bay
- Hypoxic and anoxic bottom water
- Highly eutrophic water brings large amount of organic material, consumed by benthic organisms that breathe O2 and respire CO2

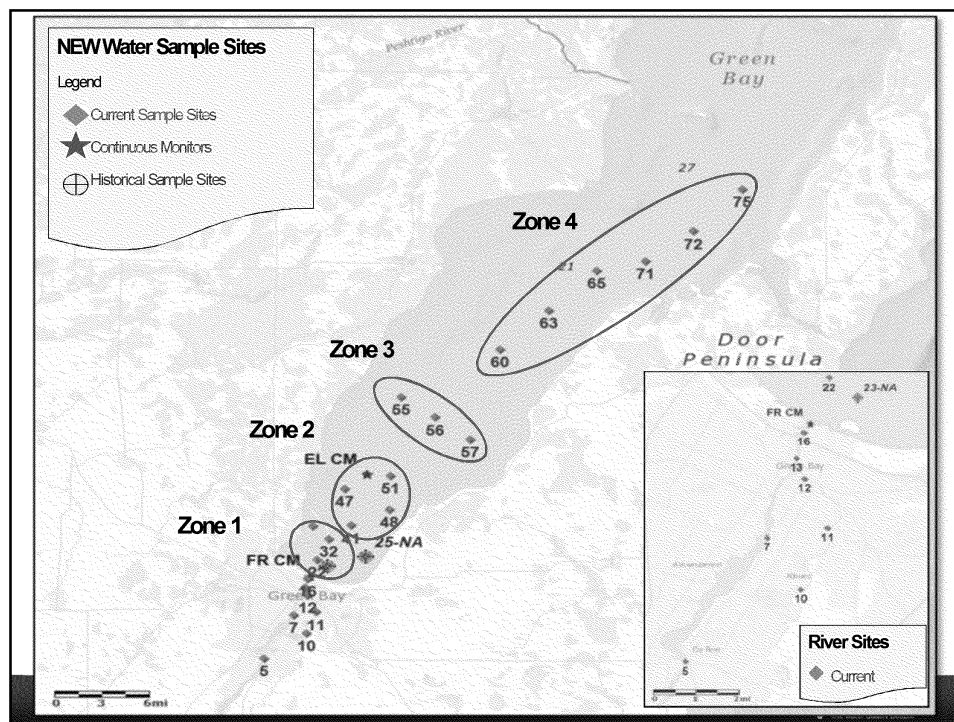


Water Quality Monitoring

- Aquatic Monitoring Program (AMP)
 - AMP est. 1986 on Green Bay and local rivers
 - Continuous monitoring sondes deployed at 2 locations
 - Water quality grab samples from 23 sites, weekly
 - Run suite of analytes in our state certified laboratory
- Watershed Nutrients & Sediments
 - Silver Creek Pilot Project (compliance option)
 - 5 sampling sites along creek
 - 1USGS gage station

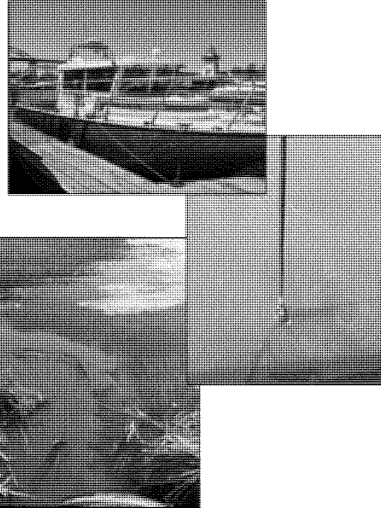


Water Environment Federation
the water quality people®



Water Quality Monitoring

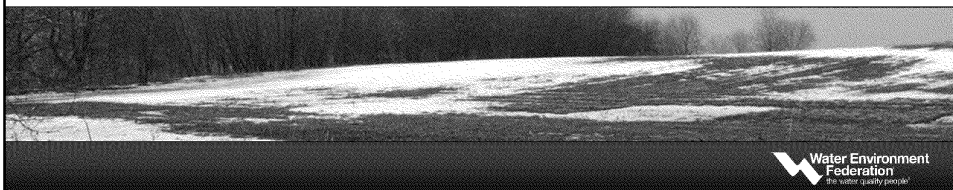
- Aquatic Monitoring Program (AMP)
 - AMP est. 1986 on Green Bay and local rivers
 - Continuous monitoring sondes deployed at 2 locations
 - Water quality grab samples from 23 sites, weekly
 - Run suite of analytes in our state certified laboratory
- Watershed Nutrients & Sediments
 - Silver Creek Pilot Project (compliance option)
 - 5 sampling sites along creek
 - 1USGS gage station



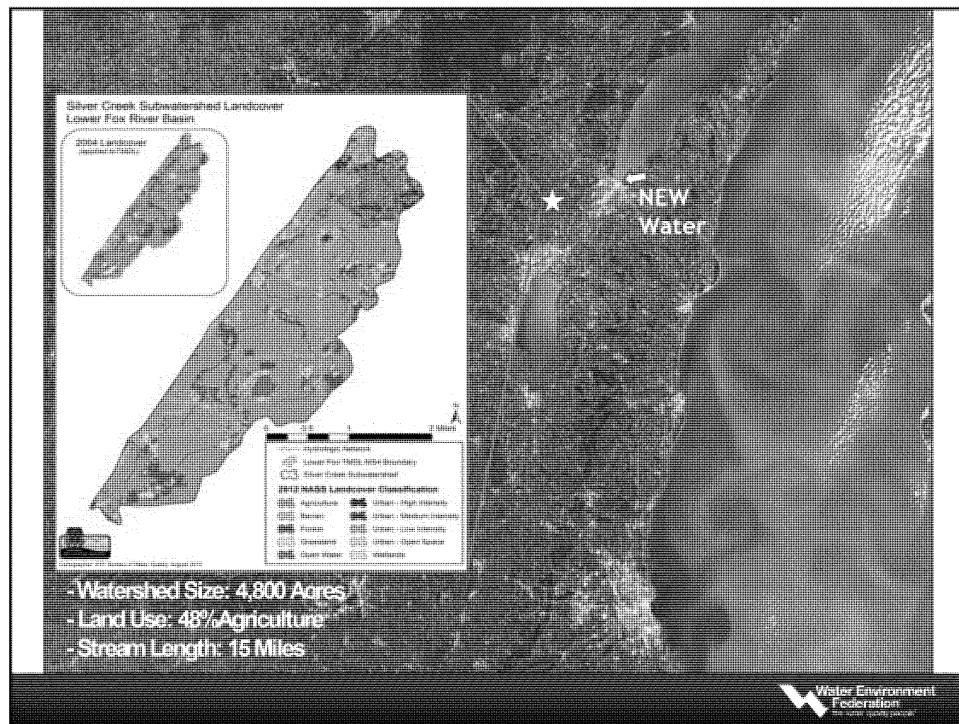
Water Environment
Federation
the water quality people®

Adaptive Management

- NEW Water issued new combined WPDES permit July 1, 2014
 - 5-year-permit cycle
- New future Total Phosphorus and Total Suspended Solids reductions
- Several options for compliance:
 - Facility improvements: \$223 - \$394 million capital cost + \$2 million annual O&M cost
 - Phosphorus Trading
 - Multi -Discharger Phosphorus Variance Program
- ***Adaptive Management** addresses new phosphorus and solids limits
 - Current: AM Pilot Silver Creek Watershed (Ag) + Plant Optimization

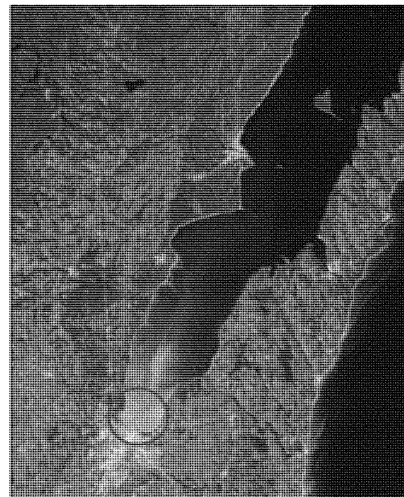


Water Environment
Federation
the water quality people®



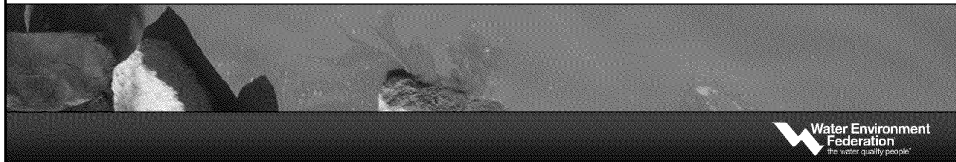
Harmful Algal Blooms

- HABs: Harmful Algal Blooms
 - Undesirable algae grows unchecked
 - Contribute large biomass to decomposition which can deplete local oxygen availability
 - Blooms are a nuisance to recreation
 - Can produce foul smells and toxins
- Unknowns about HABs
 - When and why do they produce toxins?
 - What drives/limits their formation?



Harmful Algal Blooms & Nitrogen

- Green Bay is one of the largest freshwater estuaries
 - Excess nutrients from main rivers
 - Warm shallow environment
- Freshwater algae are thought to be phosphorus limited
 - Most regulations focus on phosphorus limits
 - Studies show blooms are largest with and increase in both available phosphorus and nitrogen
- Understanding the breakdown of nitrogen and its sources may lead to improved management



Harmful Algal Bloom Research

- Cyanobacterial Harmful Algal Bloom Grant
 - Collaboration with WDNR, University of Wisconsin - Milwaukee, & NEW Water
- Comprehensive sampling: 6 locations
 - Water quality grab samples
 - Instrument measurements
 - Algal counts and species ID
 - Toxin identification and concentrations
- Sampling Frequency
 - Weekly during the spring
 - Bi-weekly during the summer/fall
 - Bump grabs to 3x/wk during peak bloom conditions
- Timeline: 3yr grant
 - Year one - 2016 establish sampling sites and routine
 - Year two - 2017 continue monitoring, addition of monitoring buoys
 - Year three - 2018 continue monitoring, data work-up and final report summaries

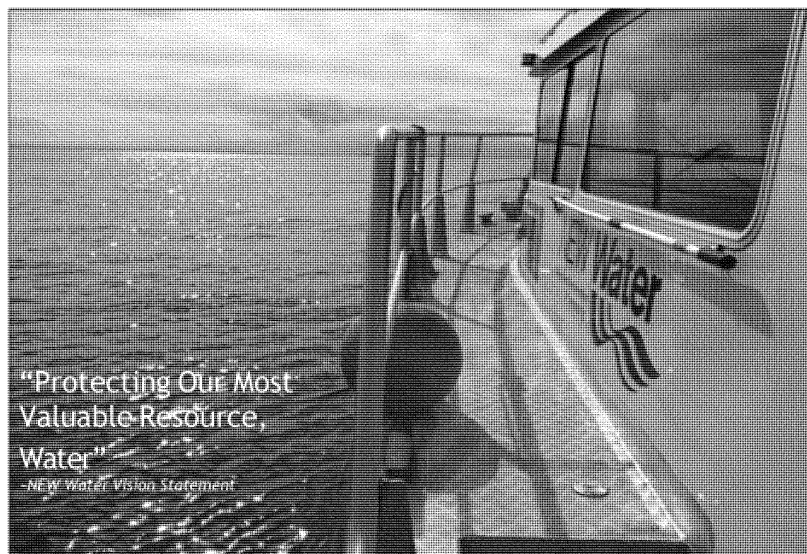


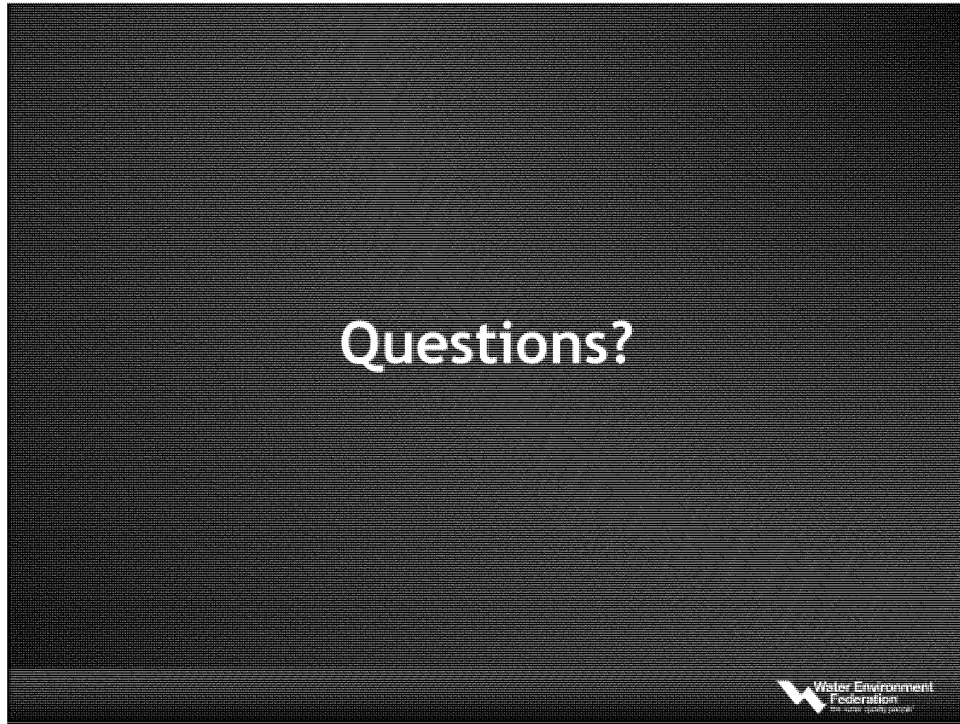
Future Life Support... ...to avoid *Death by Nutrients!*

- Better knowledge of nutrient breakdown along entire treatment process
 - To best address excess nutrient removal
 - Start preparing for future permit additions
- Improve collaboration between utilities and the community
 - New opportunities to work outside of treatment facility
 - New collaborations on water quality research
- Understanding main nutrient drivers in the environment
 - Include N and P as potential bloom drivers
 - Further understanding on HABs, toxin production, bloom management
 - Go beyond TP and TSS in TMDLs and AOCs



Thank You!





To: Schnare, David[schnare.david@epa.gov]
From: Sarvadi, David G.
Sent: Thur 3/9/2017 3:11:21 PM
Subject: RE: I'm not making any progress with the TSCA new chemicals branch

Do we have a time?

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Schnare, David"
Date: 03/07/2017 2:13 PM (GMT-05:00)
To: "Sarvadi, David G."
Subject: RE: I'm not making any progress with the TSCA new chemicals branch

The 15th in the afternoon?

d.

From: Sarvadi, David G. [mailto:Sarvadi@khlaw.com]
Sent: Tuesday, March 7, 2017 2:11 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: I'm not making any progress with the TSCA new chemicals branch

No, I'm at the ABA meeting in Florida all week and I'm moderating a panel Thursday until 11:30. Can do Monday AM but Monday PM I'm in a meeting with pesticides. Tuesday and Wednesday next are pretty open.

DGS

David Sarvadi
Keller and Heckman LLP
202-434-4249

From: Schnare, David [<mailto:schnare.david@epa.gov>]
Sent: Tuesday, March 07, 2017 1:43 PM
To: Sarvadi, David G.
Subject: RE: I'm not making any progress with the TSCA new chemicals branch

Can you come over here on Thursday afternoon this week?

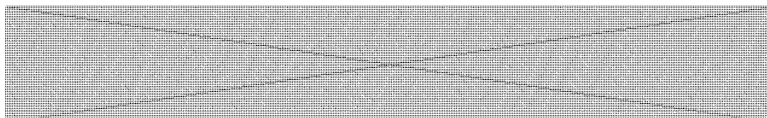
From: Sarvadi, David G. [<mailto:David.Sarvadi@khlaw.com>]
Sent: Tuesday, March 7, 2017 1:31 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: I'm not making any progress with the TSCA new chemicals branch

Can we get a half hour on Tuesday or Wednesday next week to explain our issues? We're on a critical path where lack of resolution before the end of the month means forcing the business offshore.

Cordially,
DGS

David G. Sarvadi
Attorney-at-Law
tel: 202-434-4249 fax 202-434-4646 | sarvadi@khlaw.com
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that will cover OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at



Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

To: Schnare, David[schnare.david@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Fugh, Justina
Sent: Mon 3/6/2017 3:21:10 PM
Subject: Re: Need to know this morning: David and the CWRule Litigation

Deliberative Process Privilege/Ex. 5

From: Schnare, David
Sent: Monday, March 6, 2017 10:05 AM
To: Minoli, Kevin
Cc: Fugh, Justina
Subject: Re: Need to know this morning: David and the CWRule Litigation

Neither FME Law nor E&E Legal filed on WOTUS

dschnare

Sent from my iPhone

> On Mar 6, 2017, at 9:39 AM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:
>

Deliberative Process Privilege/Ex. 5

>
> Kevin S. Minoli
> Acting General Counsel
> Office of General Counsel
> US Environmental Protection Agency
> Main Office Line: 202-564-8040

To: Schnare, David[schnare.david@epa.gov]
Cc: Dunham, Sarah[Dunham.Sarah@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; **Ex. 6/Byron Brown email**
From: Minoli, Kevin
Sent: Sun 3/5/2017 1:57:46 PM
Subject: Re: Executive Order on energy

Great, thanks again for the continuing coordination going forward. Let us know when you would like to do the huddle that you mention later this week, and, in the meantime, we will keep working on the FR notices and some additional comments. Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Mar 4, 2017, at 10:46 PM, Schnare, David <schnare.david@epa.gov> wrote:

Kevin

Deliberative Process Privilege/Ex. 5

dschnare

Sent from my iPhone

On Mar 4, 2017, at 7:16 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

Deliberative Process Privilege/Attorney-Work Product/Ex. 5

Deliberative Process Privilege/Attorney-Work Product/Ex. 5

Thanks, Kevin

Deliberative Process Privilege/Attorney-Work Product/Ex. 5

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Mar 2, 2017, at 5:25 PM, Schnare, David <schnare.david@epa.gov> wrote:

Kevin and Sarah:

Based on our best understanding of what will be in the forthcoming Executive

Order on Energy issues, the attached lists the EPA action items.

Deliberative Process Privilege/Ex. 5

Thanks,

dschnare

<Energy Independence EO Implementation.docx>

To: Grantham, Nancy[Grantham.Nancy@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Kenny, Shannon
Sent: Fri 3/10/2017 8:34:50 PM
Subject: Reg Agenda one pager
[Spring 2017 Reg Agenda.docx](#)

Sent from my iPad

To: Schnare, David[schnare.david@epa.gov]
From: Flynn, Mike
Sent: Wed 3/15/2017 11:58:59 PM
Subject: Re: Resignation

David,

Not sure if you will get this note but thought I'd send anyway. It's unfortunate your time here has ended this way. Thank you for your efforts the last few months, especially your concern for EPA and help in keeping things moving in a time of a lot of transition. Best wishes to you -

Your fellow Tarheel,
Mike

Mike Flynn
Acting Deputy Administrator
U.S. Environmental Protection Agency
(202) 564-4711

On Mar 15, 2017, at 2:41 PM, Schnare, David <schnare.david@epa.gov> wrote:

Dear colleagues:

Transitions begin and they end. I have been honored to have had the opportunity to serve the Trump Administration, but I have completed as much as I am able. Thus it is time for me to move on.

I will resign effective COB Friday and will be on leave until then.

My contact information for any who wish to remain in touch:

Personal Phone/Ex. 6

Personal Email/Ex. 6

Personal Phone/Ex. 6

I wish each of you the best.

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]
From: Sarvadi, David G.
Sent: Mon 3/13/2017 1:26:48 PM
Subject: Wednesday

I assume you fall into the essential category, so will be in Wednesday. The client is coming in from Pittsburgh and New Jersey. They probably will come down tonight and stay in town, so will be available. Do you want to talk today? Let me know.

DGS

Cordially,
DGS

David G. Sarvadi
Attorney-at-Law
tel: 202-434-4249 fax 202-434-4646 | sarvadi@khlaw.com
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that will cover OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at www.khlaw.com

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]
From: Chu, Ed
Sent: Tue 3/14/2017 9:37:00 PM
Subject: RE: Upcoming Region 7 Actions for your awareness

Ryan, David, and Mike,

Want to give you a short update and confirm next steps:

1. I have reassigned the response to Rep. Ann Wagner's request to the Administrator's office.
2. Six FR actions are now ready my signature. Would you like a briefing on any or all of the actions or would you like me to sign and send through the Office of Policy's FR Notice review process?
 - a. Omaha Lead Site FR notice for deletion of 294 properties
 - b. 4 Air Federal Register notices:
 - i. St. Louis 2008 ozone redesignation
 - ii. Revision to Missouri Air SIP re: open burning
 - iii. Missouri Title V revisions on emissions data,
emission fees, process info
 - iv. Iowa Title V revisions, SIP and 112(l) Plan
 - c. Approval of No-Migration Petition Request-March 2017 Occidental Chemical Wichita, KS

Edward H. Chu | Regional Administrator (Acting)

U.S. Environmental Protection Agency

Region 7 (Kansas, Missouri, Nebraska, Iowa & Nine Tribes)

(913) 551-7333

epa.gov | epa.gov/region7



From: Chu, Ed

Sent: Wednesday, March 08, 2017 6:13 PM

To: Jackson, Ryan <jackson.ryan@epa.gov>; Schnare, David <schnare.david@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>

Subject: Upcoming Region 7 Actions for your awareness

Importance: High

Ryan, David, and Mike,

I wanted to make you aware of pending and upcoming actions in Region 7. Please let me know if you would like more information on any of the other actions before we proceed. I want to draw your attention to three items below that may warrant further discussion: Iowa Anti-Degradation (water), Nebraska Regional Haze (air), and meeting request from Rep. Ann Wagner to the Administrator (superfund).

Edward H. Chu | Regional Administrator (Acting)

U.S. Environmental Protection Agency

Region 7 (Kansas, Missouri, Nebraska, Iowa & Nine Tribes)

(913) 551-7333

epa.gov | epa.gov/region7



SUPERFUND

Omaha Lead Site Partial NPL Delisting

Action: Notice of partial deletion is awaiting publishing in FR.

Background: This partial deletion will remove 294 properties from the NPL, and is in keeping with historical commitment to Nebraska to delete properties in batches rather than wait for final completion of the entire site.

State Position: The state supports the partial deletion package, and no significant comments were received during the public comment period.

West Lake Landfill Site Congressional Letter to Administrator

Action: Congresswoman Ann Wagner sent a letter to Administrator Pruitt on Feb 17, 2017 requesting that he meet with the Co-chairs of the Just Moms STL group. OLEM has asked R7 to prepare a response to Congresswoman Wagner; R7 needs direction from the AO regarding Administrator Pruitt's intent to accept the requested meeting

Background: While no specific agenda was noted in the letter, the Just Moms have historically advocated for a buyout of properties within 1 mile of the site, and for the site to be transferred to the Corps of Engineers FUSRAP (Formerly Utilized Sites Remedial Action Program). Former Administrator McCarthy met with the Just Moms on a few occasions as did former Regional Administrator Mark Hague.

Ellisville Site – Callahan Property Delisting

Action: Preparing full deletion of the Callahan Property.

Background: This action will delete one property. Property owner has requested

WATER

Decision Letter Issuance-March 2017 Kansas Numeric Nutrient Criteria (WWPD Director signature)

Action: Region 7 is moving to approve Kansas-developed numeric criteria water quality for their

82 drinking water lakes.

Background: This Chlorophyll-a criterion is scientifically defensible as demonstrated by the underlying research conducted by the State of Kansas and KU/KSU scientists as well as a joint effort by EPA R7, the four State Environmental Agencies, and Universities from the four States. Furthermore, the criteria value (10 ug/l) is consistent with State-developed criteria established in neighboring states (10 ug/L in Oklahoma for drinking water lakes and 8/10 ug/l for eastern/western lakes in Nebraska).

Why Now: Kansas has requested that EPA approve these criteria. The Kansas criteria are consistent with the direction the Agency is headed in developing national criteria-meaning the science and approaches to evaluate the data to set criteria. The Kansas criteria were placed on public notice and the criteria and statutory language were approved by the Kansas' AG's office.

State Position: The State of Kansas has requested EPA approve these criteria.

Approval of No-Migration Petition Request-March 2017 Occidental Chemical Wichita, KS (Acting RA signature)

Action: Approval of Federal Register notice granting final approval to modify an existing No-Migration Petition for Occidental Chemical.

Background: The existing petition issued in 2008 allows for subsurface disposal of specific hazardous wastes in Class I injection wells. The modification allows for the use of a new well (Well 11) as a replacement for Well 4 included in the earlier petition but plugged and abandoned in 2008.

Pros and Cons: There are no changes to the volume of fluid to be injected. Occidental has demonstrated that there will be no migration of hazardous constituents from injection into Well 11. EPA has determined that Well 11 is considerably safer and more protective of human health and the environment than Well 4.

Why Now: This action was discussed by Occidental at their Quarterly Community Involvement Meetings on environmental topics. EPA held an Availability Session and Public Hearing and did not receive any comments at the hearing or during the 45 day public comment period. Due to the lack of public comments, the petition modification will become effective upon issuance.

State Position: EPA is the lead for this action and has coordinated with KDHE who concurs with approval of the petition.

Iowa Anti-Degradation Implementation Procedure-EPA Action Issued January 19,2017

Action: On January 29, 2017 the Iowa Governor's Office sent an email to EPA senior managers requesting the Agency reverse the disapproval decision on the Iowa Anti-Degradation Implementation Procedures contained in a January 19, 2017 letter from Region 7.

Background: On September 30, 201 EPA approved the Iowa AIP including an economic efficiency provision as a non-binding guideline that alternatives greater than 115% of the base cost should be considered if implementation of the alternative would produce a substantial improvement in the resulting discharge. In October 2014, IDNR approved a final anti-degradation analysis submitted by the City of Clarion for a proposed expansion of their wastewater treatment plant. The Iowa Environmental Council filed a Petition for Judicial Review in Iowa District Court challenging the approval. In March 2016, the court held that IDNR had erroneously approved the Clarion analysis by not following the AIP related to analysis of alternatives. The court ruled that the AIP required an economic efficiency analysis and that IDNR failed to require the environmental benefit portion of the economic efficiency analysis. In May 2106, The Iowa League of Cities, Iowa Association of Business and Industry and Iowa Association of Municipal Utilities filed a petition for rulemaking that proposed language for modifying Iowa's AIP effectively establishing a hard cap of 115% regardless of the benefit. This hard cap is contrary to EPA's final *Water Quality Standards Regulatory Revisions Rule* became effective on October 20, 2015 and established stronger anti-degradation requirements to enhance protection of high quality waters and promote consistency in implementation.

Pros and Cons: The business and municipal stakeholders support the binding cap. The environmental stakeholders have written to EPA requesting the Agency not reverse the decision contained in the disapproval letter.

State Position: IDNR has requested the Agency reverse the disapproval decision. IDNR has expressed interest in working through this disapproval issue with EPA. In the disapproval letter Region 7 offered to meet and work with IDNR to identify remedies that would make the IAP consistent with the CWA and its implementing regulations.

AIR

-

Ready for Signature within next 2 weeks

a. Missouri- Adequacy Determination for the St. Louis Area Ozone Motor Vehicle Emissions Budget for Transportation Conformity Purposes. This Federal Register notifies the public that we have found that the motor vehicle emissions budgets in the St. Louis Redesignation Request and Maintenance Plan for the 2008 ozone nonattainment area adequate for transportation conformity purposes. The request was received by EPA Region 7 on September 15, 2016 and must be published before redesignation of St. Louis for 2008 is proposed.

b. Missouri- Jefferson County Clean Data Determination- Proposal. EPA is proposing to determine that the Jefferson County, Missouri, 2010 1-hour primary SO₂ nonattainment area has attained the National Ambient Air Quality Standard (NAAQS). This proposed determination of attainment is based upon complete, quality assured, and certified ambient air monitoring data, from the 2014-2016 monitoring period, and associated dispersion modeling, which show that the Jefferson County area has monitored and modeled attainment of the 2010 1-hour primary SO₂ NAAQS. The request and subsequent information were received by the EPA on February 2, 2016, August 4, 2016, November 21, 2016 and February 22, 2017.

c. Kansas- Startup, Shutdown, Malfunction SIP Call- Proposal. Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Ready for Signature/Action within next 4 weeks

a. Iowa- Modification to Administrative Consent Order for Pm 2.5 SIP Call in Muscatine Iowa. In 2014, EPA fully approved Iowa's State Implementation Plan (SIP) and control strategy for PM_{2.5} National Ambient Air Quality Standard (NAAQS) for Muscatine, Iowa. Iowa submitted by the state in response to the 2011 SIP Call issued to the state of Iowa. The SIP submitted by the state demonstrates continued attainment of the 2006 35 microgram per cubic meter (ug/m³) PM_{2.5} in Muscatine, Iowa through the use of source specific permits and administrative consent order. The state of Iowa has requested that EPA modify the SIP to include revisions to the Administrative Consent Order for the Grain Processing Facility.

b. Missouri- Infrastructure SIPs for 2008 ozone, 2010 SO₂ and 2010 NO₂- proposal. Section 110 of the Clean Air Act (CAA) requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The requests were received by EPA Region 7 on April 30, 2013 (NO₂) and July 9, 2013 (2008 Ozone and 2010 SO₂).

c. Missouri- Final action to approve revisions to the Operating Permits Program for the State of Missouri submitted on March 16, 2015. These revisions update the emissions fee for permitted sources as set by Missouri Statute from \$40 to \$48 per ton of air pollution emitted annually, effective January 1, 2016.

d. Missouri- Post Adequacy Determination on Transportation Conformity Website for the 1997 PM 2.5 Mobile source emission budget in order to establish redesignation action for 1997 PM 2.5 NAAQS

-

Nebraska- Proposed FIP for Regional Haze

Deliberative Process Privilege/Ex. 5

To: Schnare, David[schnare.david@epa.gov]
From: McCabe, Catherine
Sent: Wed 3/15/2017 11:47:32 PM
Subject: Re: Resignation

David - I'm truly sorry to hear that. Thank you for your service to the Agency and its mission. We all know that you did your best to support us while you could. Best wishes for your next chapter.

Sent from my iPhone

On Mar 15, 2017, at 2:41 PM, Schnare, David <schnare.david@epa.gov> wrote:

Dear colleagues:

Transitions begin and they end. I have been honored to have had the opportunity to serve the Trump Administration, but I have completed as much as I am able. Thus it is time for me to move on.

I will resign effective COB Friday and will be on leave until then.

My contact information for any who wish to remain in touch:

Personal Phone/Ex. 6

Personal Email/Ex. 6

Personal Phone/Ex. 6

I wish each of you the best.

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]
From: Brazauskas, Joseph
Sent: Mon 3/6/2017 11:24:42 PM
Subject: SAB Reform and HONEST Act
[LUCAS_002.xml.pdf](#)
[SMITTX_010.xml.pdf](#)

David,

The two bills are attached, they should be introduced tomorrow.

Thanks,

Joe

Joseph A. Brazauskas

Staff Director and Senior Counsel

Subcommittee on Environment

Committee on Science, Space and Technology

Lamar Smith, Chairman

P: (202) 225-6371

[~114H1029]

.....
(Original Signature of Member)

115TH CONGRESS
1ST SESSION

H. R. I I

To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. LUCAS introduced the following bill; which was referred to the Committee
on I I I I I I I I I I I I I I

A BILL

To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “EPA Science Advisory
5 Board Reform Act of 2017”.

1 **SEC. 2. SCIENCE ADVISORY BOARD.**

2 (a) INDEPENDENT ADVICE.—Section 8(a) of the En-
3 vironmental Research, Development, and Demonstration
4 Authorization Act of 1978 (42 U.S.C. 4365(a)) is amend-
5 ed by inserting “independently” after “Advisory Board
6 which shall”.

7 (b) MEMBERSHIP.—Section 8(b) of the Environ-
8 mental Research, Development, and Demonstration Au-
9 thorization Act of 1978 (42 U.S.C. 4365(b)) is amended
10 to read as follows:

11 “(b)(1) The Board shall be composed of at least nine
12 members, one of whom shall be designated Chairman, and
13 shall meet at such times and places as may be designated
14 by the Chairman.

15 “(2) Each member of the Board shall be qualified by
16 education, training, and experience to evaluate scientific
17 and technical information on matters referred to the
18 Board under this section. The Administrator shall ensure
19 that—

20 “(A) the scientific and technical points of view
21 represented on and the functions to be performed by
22 the Board are fairly balanced among the members of
23 the Board;

24 “(B) at least ten percent of the membership of
25 the Board are from State, local, or tribal govern-
26 ments;

1 “(C) persons with substantial and relevant ex-
2 pertise are not excluded from the Board due to af-
3 filiation with or representation of entities that may
4 have a potential interest in the Board’s advisory ac-
5 tivities, so long as that interest is fully disclosed to
6 the Administrator and the public and appointment
7 to the Board complies with section 208 of title 18,
8 United States Code;

9 “(D) in the case of a Board advisory activity on
10 a particular matter involving, or for which the Board
11 has evidence that it may involve, a specific party, no
12 Board member having an interest in the specific
13 party shall participate in that activity;

14 “(E) Board members may not participate in ad-
15 visory activities that directly or indirectly involve re-
16 view or evaluation of their own work, unless fully
17 disclosed to the public and the work has been exter-
18 nally peer-reviewed;

19 “(F) Board members shall be designated as
20 special Government employees;

21 “(G) no registered lobbyist is appointed to the
22 Board; and

23 “(H) a Board member shall have no current
24 grants or contracts from the Environmental Protec-
25 tion Agency and shall not apply for a grant or con-

1 tract for 3 years following the end of that member's
2 service on the Board.

3 “(3) The Administrator shall—

4 “(A) solicit public nominations for the Board by
5 publishing a notification in the Federal Register;

6 “(B) solicit nominations from relevant Federal
7 agencies, including the Departments of Agriculture,
8 Defense, Energy, the Interior, and Health and
9 Human Services;

10 “(C) solicit nominations from—

11 “(i) institutions of higher education (as de-
12 fined in section 101(a) of the Higher Education
13 Act of 1965 (20 U.S.C. 1001(a))); and

14 “(ii) scientific and research institutions
15 based in work relevant to that of the Board;

16 “(D) make public the list of nominees, includ-
17 ing the identity of the entities that nominated each,
18 and shall accept public comment on the nominees;

19 “(E) require that, upon their provisional nomi-
20 nation, nominees shall file a written report disclosing
21 financial relationships and interests, including Envi-
22 ronmental Protection Agency grants, contracts, co-
23 operative agreements, or other financial assistance,
24 that are relevant to the Board's advisory activities
25 for the three-year period prior to the date of their

1 nomination, and relevant professional activities and
2 public statements for the five-year period prior to
3 the date of their nomination; and

4 “(F) make such reports public, with the excep-
5 tion of specific dollar amounts, for each member of
6 the Board upon such member’s selection.

7 “(4) Disclosure of relevant professional activities
8 under paragraph (3)(E) shall include all representational
9 work, expert testimony, and contract work as well as iden-
10 tifying the party for which the work was done.

11 “(5) Except when specifically prohibited by law, the
12 Agency shall make all conflict of interest waivers granted
13 to members of the Board, member committees, or inves-
14 tigative panels publicly available.

15 “(6) Any recusal agreement made by a member of
16 the Board, a member committee, or an investigative panel,
17 or any recusal known to the Agency that occurs during
18 the course of a meeting or other work of the Board, mem-
19 ber committee, or investigative panel shall promptly be
20 made public by the Administrator.

21 “(7) The terms of the members of the Board shall
22 be three years and shall be staggered so that the terms
23 of no more than one-third of the total membership of the
24 Board shall expire within a single fiscal year. No member
25 shall serve more than two terms over a ten-year period.”.

1 (c) RECORD.—Section 8(c) of such Act (42 U.S.C.
2 4365(c)) is amended—

3 (1) in paragraph (1)—

4 (A) by inserting “or draft risk or hazard
5 assessment,” after “at the time any proposed”;

6 (B) by striking “formal”; and

7 (C) by inserting “or draft risk or hazard
8 assessment,” after “to the Board such pro-
9 posed”; and

10 (2) in paragraph (2)—

11 (A) by inserting “or draft risk or hazard
12 assessment,” after “the scientific and technical
13 basis of the proposed”; and

14 (B) by adding at the end the following:
15 “The Board’s advice and comments, including
16 dissenting views of Board members, and the re-
17 sponse of the Administrator shall be included in
18 the record with respect to any proposed risk or
19 hazard assessment, criteria document, standard,
20 limitation, or regulation and published in the
21 Federal Register.”.

22 (d) MEMBER COMMITTEES AND INVESTIGATIVE PAN-
23 ELS.—Section 8(e)(1)(A) of such Act (42 U.S.C.
24 4365(e)(1)(A)) is amended by adding at the end the fol-

1 lowing: “These member committees and investigative pan-
2 els—

3 “(i) shall be constituted and operate
4 in accordance with the provisions set forth
5 in paragraphs (2) and (3) of subsection
6 (b), in subsection (h), and in subsection
7 (i);

8 “(ii) do not have authority to make
9 decisions on behalf of the Board; and

10 “(iii) may not report directly to the
11 Environmental Protection Agency.”.

12 (e) PUBLIC PARTICIPATION.—Section 8 of such Act
13 (42 U.S.C. 4365) is amended by amending subsection (h)
14 to read as follows:

15 “(h)(1) To facilitate public participation in the advi-
16 sory activities of the Board, the Administrator and the
17 Board shall make public all reports and relevant scientific
18 information and shall provide materials to the public at
19 the same time as received by members of the Board.

20 “(2) Prior to conducting major advisory activities, the
21 Board shall hold a public information-gathering session to
22 discuss the state of the science related to the advisory ac-
23 tivity.

24 “(3) Prior to convening a member committee or in-
25 vestigative panel under subsection (e) or requesting sci-

1 entific advice from the Board, the Administrator shall ac-
2 cept, consider, and address public comments on questions
3 to be asked of the Board. The Board, member committees,
4 and investigative panels shall accept, consider, and ad-
5 dress public comments on such questions and shall not ac-
6 cept a question that unduly narrows the scope of an advi-
7 sory activity.

8 “(4) The Administrator and the Board shall encour-
9 age public comments, including oral comments and discus-
10 sion during the proceedings, that shall not be limited by
11 an insufficient or arbitrary time restriction. Public com-
12 ments shall be provided to the Board when received, and
13 shall be published in the Federal Register grouped by com-
14 mon themes. If multiple repetitious comments are re-
15 ceived, only one such comment shall be published along
16 with the number of such repetitious comments received.
17 Any report made public by the Board shall include written
18 responses to significant comments, including those that
19 present an alternative hypothesis-based scientific point of
20 view, offered by members of the public to the Board.

21 “(5) Following Board meetings, the public shall be
22 given 15 calendar days to provide additional comments for
23 consideration by the Board.”.

1 (f) OPERATIONS.—Section 8 of such Act (42 U.S.C.
2 4365) is further amended by amending subsection (i) to
3 read as follows:

4 “(i)(1) In carrying out its advisory activities, the
5 Board shall strive to avoid making policy determinations
6 or recommendations, and, in the event the Board feels
7 compelled to offer policy advice, shall explicitly distinguish
8 between scientific determinations and policy advice.

9 “(2) The Board shall clearly communicate uncertain-
10 ties associated with the scientific advice provided to the
11 Administrator or Congress.

12 “(3) The Board shall ensure that advice and com-
13 ments reflect the views of the members and shall encour-
14 age dissenting members to make their views known to the
15 public, the Administrator, and Congress.

16 “(4) The Board shall conduct periodic reviews to en-
17 sure that its advisory activities are addressing the most
18 important scientific issues affecting the Environmental
19 Protection Agency.

20 “(5) The Board shall be fully and timely responsive
21 to Congress.”.

1 **SEC. 3. RELATION TO THE FEDERAL ADVISORY COM-**
2 **MITTEE ACT.**

3 Nothing in this Act or the amendments made by this
4 Act shall be construed as supplanting the requirements of
5 the Federal Advisory Committee Act (5 U.S.C. App.).

6 **SEC. 4. RELATION TO THE ETHICS IN GOVERNMENT ACT OF**
7 **1978.**

8 Nothing in this Act or the amendments made by this
9 Act shall be construed as supplanting the requirements of
10 the Ethics in Government Act of 1978 (5 U.S.C. App.).

[DISCUSSION DRAFT]

115TH CONGRESS
1ST SESSION

H. R. | |

To prohibit the Environmental Protection Agency from proposing, finalizing, or disseminating regulations or assessments based upon science that is not transparent or reproducible.

IN THE HOUSE OF REPRESENTATIVES

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on | | | | | | | | | |

A BILL

To prohibit the Environmental Protection Agency from proposing, finalizing, or disseminating regulations or assessments based upon science that is not transparent or reproducible.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Honest and Open New
5 EPA Science Treatment Act of 2017” or the “HONEST
6 Act”.

1 **SEC. 2. DATA TRANSPARENCY.**

2 Section 6(b) of the Environmental Research, Devel-
3 opment, and Demonstration Authorization Act of 1978
4 (42 U.S.C. 4363 note) is amended to read as follows:

5 “(b)(1) The Administrator shall not propose, finalize,
6 or disseminate a covered action unless all scientific and
7 technical information relied on to support such covered ac-
8 tion is—

9 “(A) the best available science;

10 “(B) specifically identified; and

11 “(C) publicly available online in a manner that
12 is sufficient for independent analysis and substantial
13 reproduction of research results, except that any
14 personally identifiable information, trade secrets, or
15 commercial or financial information obtained from a
16 person and privileged or confidential, shall be re-
17 dacted prior to public availability.

18 “(2) The redacted information described in para-
19 graph (1)(C) shall be disclosed to a person only after such
20 person signs a written confidentiality agreement with the
21 Administrator, subject to guidance to be developed by the
22 Administrator.

23 “(3) Nothing in the subsection shall be construed
24 as—

25 “(A) requiring the Administrator to disseminate
26 scientific and technical information;

1 “(B) superseding any nondiscretionary statu-
2 tory requirement; or

3 “(C) requiring the Administrator to repeal, re-
4 issue, or modify a regulation in effect on the date of
5 enactment of the Honest and Open New EPA
6 Science Treatment Act of 2017.

7 “(4) In this subsection—

8 “(A) the term ‘covered action’ means a risk, ex-
9 posure, or hazard assessment, criteria document,
10 standard, limitation, regulation, regulatory impact
11 analysis, or guidance; and

12 “(B) the term ‘scientific and technical informa-
13 tion’ includes—

14 “(i) materials, data, and associated proto-
15 cols necessary to understand, assess, and ex-
16 tend conclusions;

17 “(ii) computer codes and models involved
18 in the creation and analysis of such informa-
19 tion;

20 “(iii) recorded factual materials; and

21 “(iv) detailed descriptions of how to access
22 and use such information.

23 “(5) The Administrator shall carry out this sub-
24 section in a manner that does not exceed \$1,000,000 per

- 1 fiscal year, to be derived from amounts otherwise author-
- 2 ized to be appropriated.'’.

To: Schnare, David[schnare.david@epa.gov]
From: Hope, Brian
Sent: Mon 3/13/2017 1:02:30 PM
Subject: FW: Role of Carbon Dioxide in Climate Change

-----Original Message-----

From: [REDACTED] [mailto: [REDACTED]] **Personal Email/Ex. 6**
Sent: Friday, March 10, 2017 10:06 AM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: Role of Carbon Dioxide in Climate Change

Dear Administrator Pruitt,

I read with interest your comments this week regarding disagreement over the role of carbon dioxide, etc. in climate change. Although not a "climate scientist" per se, I am an independent analyst with extensive training from MIT in quantitative methods and public sector management. I have 38 years of professional experience spread across a variety of analysis-intensive applications, and am just completing work on a study that takes a fresh look at anthropogenic effects on climate change. Relying almost entirely on data assembled and published by NOAA and other public agencies, the study examines such issues as:

- the climate's natural "rebound" from past deep cold periods analogous to the so-called "Little Ice Age" (approx. 1300-1800 AD), from which we have been recovering;
- profound inconsistencies between patterns of CO2 concentration and temperature change during the industrial era that contradict the conventional AGW narrative;
- exogenous events and conditions that have created false impressions of anthropogenic climate effects during recent time periods; and,
- natural processes that can be discerned from the data as principal drivers of changes in global mean air temperatures, including variations in sea surface temperatures and causal mechanisms heretofore overlooked in the climate debate.

Overall, the study does substantiate a natural pattern of slow air temperature growth over the past two centuries, and is consistent with the existence of a tangible greenhouse effect driven by natural variations in water vapor. Beyond that, however, it indicates the need to thoroughly reconsider any belief that trace atmospheric components like CO2 play any significant role in climate variations we may experience, and any policy that purports to benefit the public interest by curtailing such components.

Needless to say, the "climate" in recent decades has not been particularly conducive to this type of evidence-based research, or fact-checking on AGW proponents. If any of my work would be useful to your new EPA, I'd be happy to assist as needed.

Sincerely,

Mike Nelson
Independent Consultant

Personal Address/Ex. 6

To: Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Reeder, John[Reeder.John@epa.gov]; Schnare, David[schnare.david@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Hull, George[Hull.George@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]; Strauss, Alexis[Strauss.Alexis@epa.gov]; Jordan, Deborah[Jordan.Deborah@epa.gov]
Cc: Lewis, Josh[Lewis.Josh@epa.gov]; Cyran, Carissa[Cyran.Carissa@epa.gov]; McKaughan, Colleen[McKaughan.Colleen@epa.gov]; Fonseca, Silvina[Fonseca.Silvina@epa.gov]; Burden, Susan[Burden.Susan@epa.gov]; Hautamaki, Jared[Hautamaki.Jared@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Page, Steve[Page.Steve@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]
From: Knapp, Kristien
Sent: Tue 3/14/2017 9:36:39 PM
Subject: Signed - North Coast Limited FIP
[North Coast Limited FIP.pdf](#)

This afternoon, Administrator Pruitt signed a final rule titled, "Limited Federal Implementation Plan; Prevention of Significant Deterioration Requirements for Fine Particulate Matter (PM_{2.5}); California; North Coast Unified Air Quality Management District" (SAN 5998). A copy of the signature page is attached. Please call with any questions.

Thanks,

Kristien

Kristien Knapp

Special Assistant, Office of the Administrator

U.S. Environmental Protection Agency

(202) 564-3277

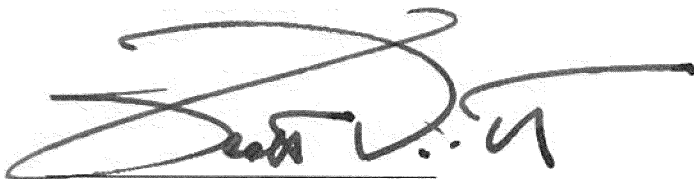
**Limited Federal Implementation Plan; Prevention of Significant Deterioration
Requirements for Fine Particulate Matter (PM_{2.5}); California; North Coast Unified Air
Quality Management District**

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401 et seq.

Dated: 3/14/2017

A handwritten signature in dark ink, appearing to read "E. Scott Pruitt", is written over a horizontal line.

E. Scott Pruitt,
Administrator.

From: Willis, Sharnett
Location: 3402 WJC-N
Importance: High
Subject: Canceled: Personnel Issues
Start Date/Time: Wed 3/8/2017 8:30:00 PM
End Date/Time: Wed 3/8/2017 9:00:00 PM

Hiring SES

To: Hull, George[Hull.George@epa.gov]; Konkus, John[konkus.john@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Grantham, Nancy
Sent: Sat 3/4/2017 4:20:06 PM
Subject: Fwd: Draft notice
CAFE-FR-notice-joint-DOT-EPA notice DWS edits +OGC.DOCX
ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Millett, John" <Millett.John@epa.gov>
Date: March 4, 2017 at 11:07:58 AM EST
To: "Konkus, John" <konkus.john@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Hull, George" <Hull.George@epa.gov>
Subject: Fwd: Draft notice

FYI --

John Millett
202.510.1822

Begin forwarded message:

From: "Dunham, Sarah" <Dunham.Sarah@epa.gov>
Date: March 3, 2017 at 6:41:54 PM EST
To: "Millett, John" <Millett.John@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>
Subject: Draft notice

Attached is the latest version I have of the draft notice. My understanding is that all the suggested edits you see in red line in this draft were accepted (at least within EPA).

To: Brown, Byron[brown.byron@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
From: Richardson, RobinH
Sent: Tue 3/7/2017 11:01:23 PM
Subject: Re: Letter to Administrator Pruitt EPA re Unredacted FOIA Documents

Hi Byron - Understand. Thank you. As we pull the documents together we'll be mindful of the those to/from the White House and other federal agencies. Best, Robin

Robin H Richardson
PDAA, EPA/OCIR
(202) 564-3358 (desk)
(703) 581-5814 (cell)
richardson.robinh@epa.gov

On Mar 7, 2017, at 5:33 PM, Brown, Byron <brown.byron@epa.gov> wrote:

It would be helpful to know if any of the requested documents concern communications with the White House or other agencies.

From: Schnare, David
Sent: Tuesday, March 7, 2017 4:13 PM
To: Richardson, RobinH <Richardson.RobinH@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: FW: Letter to Administrator Pruitt EPA re Unredacted FOIA Documents

Robin:

Can you check in with Tom Dickerson to see where we are on this and does anyone needs to give an ok to producing these to Chairman Chaffetz, and if so, who.

d.

From: McGrath, William [<mailto:William.McGrath@mail.house.gov>]
Sent: Tuesday, March 7, 2017 3:34 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: FW: Letter to Administrator Pruitt EPA re Unredacted FOIA Documents

David,

Attached is a letter that Chairman Chaffetz sent to the EPA today requesting 275 specific redacted documents the Committee has pulled from public foia documents. The documents are being sent in 6 attachments to Tom Dickerson due to the size. I'd be happy to provide you with a cd of the documents if you would like or can forward the 6 other emails.

Any assistance you could provide in expediting a response to the Committee would be appreciated.

Regards,

Bill

Bill McGrath

Staff Director

Subcommittee on Interior, Energy and Environment

House Committee on Oversight and Gov't Reform

Phone: (202) 225-6534

Email: William.McGrath@mail.house.gov

From: Casey, Sharon
Sent: Tuesday, March 7, 2017 3:24 PM
To: Dickerson.Tom@epa.gov
Cc: Feeley, Drew <Drew.Feeley@mail.house.gov>; McGrath, William <William.McGrath@mail.house.gov>; McKenna, Liam <Liam.McKenna@mail.house.gov>
Subject: Letter to Administrator Pruitt EPA re Unredacted FOIA Documents

Attached please find a letter from Chairman Chaffetz of the U.S. House of Representatives Committee on Oversight and Government Reform. Please note the letter requests a response by March 21, 2017.

Attachments will follow in 6 emails.

Please acknowledge receipt of this letter.

Thank you,

Sharon Casey

Sharon Ryan Casey

Deputy Chief Clerk

<image001.png> Committee on Oversight and Government Reform

2157 Rayburn Building, Washington, DC 20515

202-593-8219 sharon.casey@mail.house.gov

To: Schnare, David[schnare.david@epa.gov]
From: John Hall
Sent: Fri 3/3/2017 4:07:19 PM
Subject: RE: Meeting request to discuss EPA support for peer reviews

David

That is good to know. Of course, if OW makes the call, the answer will be no – like before. Anything else would be an admission that something might be awry with their prior decision making.

Do you believe that a client/Congressional rep meeting with Administrator Pruitt is needed to make something positive happen?

Thanks

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Friday, March 03, 2017 10:57 AM
To: John Hall
Subject: RE: Meeting request to discuss EPA support for peer reviews

Our folks are tracking your requests and I am monitoring them.

d.

From: John Hall [mailto:jhall@hall-associates.com]
Sent: Friday, March 3, 2017 10:45 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Meeting request to discuss EPA support for peer reviews

David

As you know several requests have been submitted to address major EPA actions in PA, MA and MN that were based on junk science – or no science at all.

We believe that the best way to resolve the science issues is for the new administration to support the request for peer review (which the prior administration turned down for both Taunton and the PA TMDLs).

Please let me know if you have time to discuss whether EPA will support the request.

PS – Here is a Letter to the Editor CRR submitted to the Post on EPA's scientific abuses – of course it wasn't printed.

John

John C. Hall

Executive Director

Center for Regulatory Reasonableness

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: John Hall

Sent: Friday, February 10, 2017 12:10 PM

To: 'Schnare, David'

Subject: RE: Various Junk Science/Illegal Rulemaking Projects Soon to Land on Your Doorstep (can we chat when you have a few minutes)

David

I'm still working on your timeline request re: the other bad science projects I mentioned. The following cases are presently pending before various federal courts. Letters are being submitted to Administrator Pruitt asking for the matters to be placed in abeyance and EPA's position reconsidered:

Challenge to EPA Blending/Bacteria Mixing Zone Ban (CRR v. EPA – DC Cir): EPA ignored 8th Cir *ILOC v. EPA* ruling vacating the illegal/ultra vires NPDES rule modifications and re-imposed them in Nov. 2013. Nationwide cost several hundred billion for blending ban, even greater cost for bacteria mixing zone ban (basically means zero CSO discharge and disinfection of all stormwater discharges). Case pending decision. **Request:** Because briefing is completed, clarify to Court EPA decision to continue imposition of NPDES permitting prohibitions vacated in *ILOC v. EPA*, outside of the 8th Circuit.

Challenge to EPA Permit Action imposing State of the Art Nutrient Limits with No Site-Specific Water Quality Impacts Analyses (City of Taunton v. EPA – 1st Cir.): EPA declared entire Taunton estuary nutrient impaired and created new procedure to claim state of the art TN limits were required (aka “Sentinel Method”); Three top experts stated EPA analysis/Sentinel Method was grossly flawed - EPA HQ agreed new method had never undergone peer review or been demonstrated to be scientifically defensible. Nonetheless, EPA HQ refused to conduct peer review of new method, in violation of Peer Review Handbook governing use of new procedures to be used in regulatory setting. EPA/EAB claimed further technical justification was unnecessary because requirements may be imposed without any “cause and effect” demonstration – which basically re-writes CWA to allow EPA to impose stringent limits without site-specific demonstration of need. Opening briefs April 1, 2017. **Status:** Letter to be submitted from affected Cities shortly asking for matter to be moved to ADR process.

Challenge to Approval of MN Stream Nutrient Criteria with Unprecedented Nutrient Impairment Criteria (CRR. V EPA - DC Dist Ct): EPA promoted MN adoption of unprecedented nutrient impairment indicators (BOD and DO flux) and then approved them, even though EPA knew these parameters do not actually cause “impairment” and numerous non-nutrient factors affect them. EPA’s action will result in classifying many additional waters nutrient impaired, when they are not. Nation’s (and EPA’s) leading expert on proper BOD test usage, *Standard Methods*, informed EPA using the test to predict nutrient impairment was improper – EPA also ignored the finding of this independent expert group. Parties filing motions on administrative record. **Status:** Letter seeking reconsideration to be submitted next week. Expect contact from Congressional Representatives in support of action/reconsideration.

Challenge to NH MS4 permit (Filing on EPA NH action pending; Existing challenge to MA MS4 permit in DC Cir.): EPA radically modified MS4 permit, creating new mandates nowhere found in federal law or regulation and changing basic burden of proof for setting more restrictive requirements under CWA (presume causing impairment unless permittee proves otherwise); EPA action created federal review authority over all local land use permitting decisions – which is unprecedented overreach. NH Gov. Sununu expected to contact Administration for withdrawal of permit. Parties to meet thereafter. **Status:** Request for withdrawal of EPA MS4

permit already under consideration – ADR process likely avenue for relief.

Challenge to PA Nutrient TMDLs Using Junk Science to Impose Unattainable Reduction Mandates(Telford Boro et al v. EPA, ED PA): EPA created stringent nutrient limits for all of Eastern Pennsylvania using methods EPA’s Science Advisory Board stated were not scientifically defensible. The water quality limits EPA created are exceeded in natural background waters in Eastern PA and would require “pre-European” conditions (i.e., reforestation of entire watershed and removal of all human influences) to meet mandated nutrient load reduction requirements. Methods used to devise similar limits in nearby Wissahickon watershed also violate the laws of physics and nature (settling of dissolved substances, and plant growth occurring in the dead of winter and during major storm event when plant growth does not physically occur). EPA also rejected all field studies and peer reviewed literature confirming that plant growth would not be controlled with the proposed nutrient reduction program. **Status:** The Eastern PA communities and municipal trade assn’s will be meeting in end of February to coordinate Congressional assistance on seeking peer review of EPA’s arbitrary mandates. Letter to EPA expected in early March as well as Congressional inquiry.

PS – EPA recently proposed new blue-green algae “toxin” standards to create a basis for regulating phosphorus nationwide to extremely low levels. The analysis is so grossly incorrect and impacts on human health so clearly fabricated, it is embarrassing. Comments on this latest EPA masterpiece are due Feb 17, 2017.

-

Clearly, the New Administration has its hands full.

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: Schnare, David [<mailto:schnare.david@epa.gov>]

Sent: Thursday, January 26, 2017 6:05 PM

To: John Hall

Subject: RE: CRR Letter to New Administration - Request to Immediately Freeze NH Stormwater General Permit Issued by EPA January 18, 2017

John:

Can you send me a timeline and examples of the less than credible science R1 has been using, and that OW has approved. I need context and specifics to approach this issue. It would be very helpful if you cast that briefing in the context of EPA's Information Quality Act guidance. That is the tool I want to see used to pull the agency back into the mainstream.

d.

From: Flynn, Mike
Location: WJC-N 3415
Importance: High
Subject: Canceled: Hot Issues Check-in
Start Date/Time: Wed 3/29/2017 7:00:00 PM
End Date/Time: Wed 3/29/2017 7:30:00 PM

To: Schnare, David[schnare.david@epa.gov]
From: Hope, Brian
Sent: Mon 3/13/2017 12:43:15 PM
Subject: FW: Reminder: Larry Ishmael shared "ECONOMIC AND POLICY IMPLICATIONS OF HUMAN HEALTH EFFECTS FROM VEHICLE EMISSIONS IN CAPE TOWN.docx" with you

From: Dropbox [mailto:no-reply@dropboxmail.com]
Sent: Monday, March 13, 2017 3:36 AM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: Reminder: Larry Ishmael shared "ECONOMIC AND POLICY IMPLICATIONS OF HUMAN HEALTH EFFECTS FROM VEHICLE EMISSIONS IN CAPE TOWN.docx" with you

Hi there,

In case you missed it, Larry Ishmael [REDACTED] shared "ECONOMIC AND POLICY IMPLICATIONS OF HUMAN HEALTH EFFECTS FROM VEHICLE EMISSIONS IN CAPE TOWN.docx" with you on Dropbox.

Larry said:

"Director Pruitt, don't forget about me! I can help you cut back the EPA and debunk the CO2 economic model for anthropogenic climate change. I'm an Okie and 2 time US House from Washington 01 (ran against Jay Inslee). I'm also a friend of Tom Cole. Let me help! Meanwhile, here is my PhD dissertation that helps debunk anthropogenic climate change. I'm pulling for you! Professor Larry W Ishmael "

Thanks!
- The Dropbox Team

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Schnare, David[schnare.david@epa.gov]; Kenny, Shannon[Kenny.Shannon@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Benton, Donald[benton.donald@epa.gov]
From: Connors, Sandra
Sent: Tue 3/14/2017 8:59:59 PM
Subject: Hot Topics 3.14 Follow-up/Draft 3.15 List
[3-14-2017 Daily Hot Topics with Follow-up Notes.docx](#)
[REVISED DRAFT 3-15-2017 Daily Hot Topics.docx](#)

Samantha - Attached please find two documents in follow-up to our discussion.

1) In an effort to assist in follow-up, I've attached a version of the March 14 paper with notes regarding follow-up actions. If you find this helpful, I am happy to continue to provide this.

2) I've also attached a draft for tomorrow's meeting, with the items transferred from the prior day's listing in a separate table following the new items. Alternatively I can just add those items into the table above if that is preferable.

Many in the meeting have requested that I share these documents electronically. It was quite challenging to hear so my apologies for items I may have missed. I will be in the office at 7:00 and happy to make any edits/additions as needed.

To: Schnare, David[schnare.david@epa.gov]; Fugh, Justina[Fugh.Justina@epa.gov]
From: Minoli, Kevin
Sent: Mon 3/6/2017 2:38:59 PM
Subject: Need to know this morning: David and the CWRule Litigation

David and Justina- Can you please remind me whether David is recused from the litigation over the Clean Water Rule? Thanks. Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

To: Schnare, David[schnare.david@epa.gov]
From: Grantham, Nancy
Sent: Sat 3/4/2017 4:08:55 PM
Subject: Fwd: CAFE discussion draft: joint DOT-EPA draft notice

FYI

Sent from my iPhone

Begin forwarded message:

From: "Konkus, John" <konkus.john@epa.gov>
Date: March 4, 2017 at 10:33:56 AM EST
To: "Hull, George" <Hull.George@epa.gov>
Cc: Marianne McInerney <marianne.mcinerney@dot.gov>, Allison Moore <A.Moore@dot.gov>, "Milbourn, Cathy" <Milbourn.Cathy@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Bradley.A.Rateike" EOP/Ex. 6 <Bradley.A.Rateike EOP/Ex. 6>, "Kaelan.K.Dorr" EOP/Ex. 6 <Kaelan.K.Dorr EOP/Ex. 6>
Subject: Re: CAFE discussion draft: joint DOT-EPA draft notice

Team after further consultation with the White House and with our chief of staff, we would like to suggest shelving this call until Tuesday. Nothing is going to happen on this front between now and then. We can continue to prepare internally. If anyone has any questions you can call me on my cell anytime: Personal Phone/Ex. 6

Thank you and enjoy your weekend!

John Konkus

Sent from my iPhone

On Mar 4, 2017, at 10:29 AM, Hull, George <Hull.George@epa.gov> wrote:

Brad and Kaelan,

Adding you to this e-mail chain to share draft Comms Documents. - George

Sent from my iPhone

Begin forwarded message:

From: "Hull, George" <Hull.George@epa.gov<<mailto:Hull.George@epa.gov>>>

To: "Marianne McInerney"

<marianne.mcinerney@dot.gov<<mailto:marianne.mcinerney@dot.gov>>>, "Allison Moore" <A.Moore@dot.gov<<mailto:A.Moore@dot.gov>>>

Cc: "Konkus, John" <konkus.john@epa.gov<<mailto:konkus.john@epa.gov>>>, "Grantham, Nancy"

<Grantham.Nancy@epa.gov<<mailto:Grantham.Nancy@epa.gov>>>, "Milbourn, Cathy"

<Milbourn.Cathy@epa.gov<<mailto:Milbourn.Cathy@epa.gov>>>

Subject: CAFE discussion draft: joint DOT-EPA draft notice

Marianne and Allison,

We thought it would be helpful in our discussion this afternoon to share our draft communications documents. Please find attached a draft Communications Plan, Press Release and Q+A document. Also attached are three letters from the auto sector to our Administrator sharing concerns over the current standards. - George

George

<MTE Reconsideration Comms Plan.docx>

<GHG Draft Release 3.2.17 (003).docx>

<MTE-Q-A-DRAFT 03-03-17.docx>

<CA1078111110.pdf>

<document_gw_13.pdf>

<Letter-to-EPA-Admin.-Pruitt-Feb.-21-2016-Signed.pdf>

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]
From: Chu, Ed
Sent: Thur 3/9/2017 2:43:54 PM
Subject: Region 7 Storms and Fires

Ryan, David, and Mike,

For your situational awareness about storms in Region 7 – although we have fielded several storm related calls this week, our responders have not been mobilized for response. EPA Spill line staff has been in contact with duty officers in states impacted by severe weather and will continue to monitor the situation. One EPA employee's home was severely damaged. Fortunately, the employee and family were not at home when damage occurred.

Significant wildfires continue in Kansas. EPA contacted KDHE spill line to follow up on situation. No environmental impacts or potential threats to facilities or sensitive areas were reported at this time. We will continue to monitor situation as needed. I understand that over 650,000 acres have burned and hundreds of cattle dead so far.

EPA Spill line and standby duty officer will continue to coordinate with State responders and monitor storm and fire related responses.

Edward H. Chu | Regional Administrator (Acting)

U.S. Environmental Protection Agency

Region 7 (Kansas, Missouri, Nebraska, Iowa & Nine Tribes)

(913) 551-7333

epa.gov | epa.gov/region7



To: Schnare, David[schnare.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Dravis, Samantha
Sent: Tue 3/7/2017 10:55:21 PM
Subject: RE: Pebble mine

Deliberative Process/Attorney Client Privilege/Ex. 5

From: Schnare, David
Sent: Tuesday, March 7, 2017 4:36 PM
To: Schwab, Justin <schwab.justin@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: Pebble mine

That is my reading of the email from Ryan.

dschnare

From: Schwab, Justin
Sent: Tuesday, March 7, 2017 4:33 PM
To: Schnare, David <schnare.david@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: Pebble mine

Deliberative Process/Attorney Client Privilege/Ex. 5

From: Schnare, David
Sent: Tuesday, March 7, 2017 4:20 PM
To: Schwab, Justin <schwab.justin@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>

Subject: FW: Pebble mine

Deliberative Process/Attorney Client Privilege/Ex. 5

dschnare

From: Jackson, Ryan

Sent: Tuesday, March 7, 2017 3:05 PM

To: Schnare, David <schnare.david@epa.gov>

Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>

Subject: Re: Pebble mine

Deliberative Process Privilege/Ex. 5

Ryan Jackson

Chief of Staff

U.S. EPA

Personal Phone/Ex. 6

On Mar 7, 2017, at 2:28 PM, Schnare, David <schnare.david@epa.gov> wrote:

Here is a one page decision memo on Pebble mine.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

dschnare

<Pebble Mine Decision.docx>

From: Flynn, Mike
Location: WJC-N 3415
Importance: High
Subject: Canceled: Hot Issues Check-in
Start Date/Time: Mon 3/13/2017 7:00:00 PM
End Date/Time: Mon 3/13/2017 7:30:00 PM

To: Anderson, Denise[anderson.denise@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]
From: Benton, Donald
Sent: Mon 3/13/2017 12:23:17 PM
Subject: NLC conference

Denise, I will be going straight to the NLC conference this morning and will be available on my cell. I will be in after the luncheon.

Thanks, Don

Sent from my iPad

To: Britt, Michael (OST)[Michael.Britt@dot.gov]; Fiorentino, Marty (OST)[marty.fiorentino@dot.gov]; Fulton, Finch (OST)[Finch.Fulton@dot.gov]; McCown, Brigham (OST)[brigham.mccown@dot.gov]; Owens, James (OST)[j.owens@dot.gov]; McInerney, Marianne (OST)[marianne.mcinerney@dot.gov]; Moore, Allison (OST)[A.Moore@dot.gov]; Iverson, Kristine (OST)[kristine.iverson@dot.gov]; Michael Catanzaro[**EOP/Ex. 6**]; Ja'Ron Smith[**EOP/Ex. 6**]; Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Pugliese, Anthony (OST)[anthony.Pugliese@dot.gov]
From: Smith, Loren (OST)
Sent: Mon 3/13/2017 8:58:16 PM
Subject: CAFE notice is at the Federal Register
CAFE-FINAL FINAL-joint-notice-DOT-EPA -Signed.pdf

Should be on the website on Wednesday. PDF version attached.

Loren Smith
USDOT

Personal Phone/Ex. 6

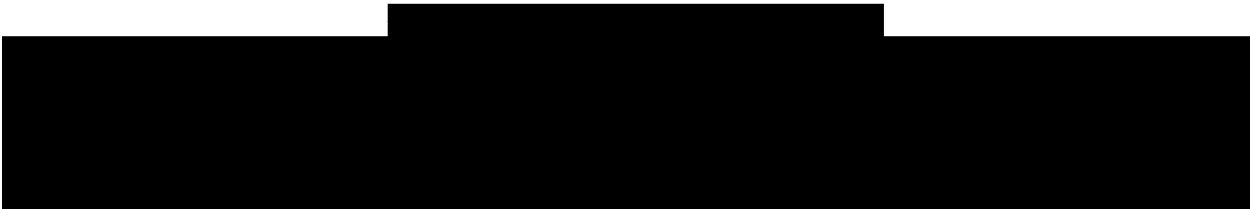
To: Schnare, David[schnare.david@epa.gov]
From: McCown, Brigham (OST)
Sent: Mon 3/6/2017 2:21:00 PM
Subject: Re: CAFE discussion draft: joint DOT-EPA notice

Lol I got you.

Best,

Brigham

B. A. McCown
Consultant - Advisor to the Secretary
U.S. Department of Transportation
Office of the Secretary
West Building W92-319
1200 New Jersey Ave, S.E.
Washington, DC 20590
(202) 366-9315 (office)



Sorry
More names than a Russian novel

dschnare

Sent from my iPhone

On Mar 5, 2017, at 10:38 PM, McCown, Brigham (OST) <brigham.mccown@dot.gov> wrote:

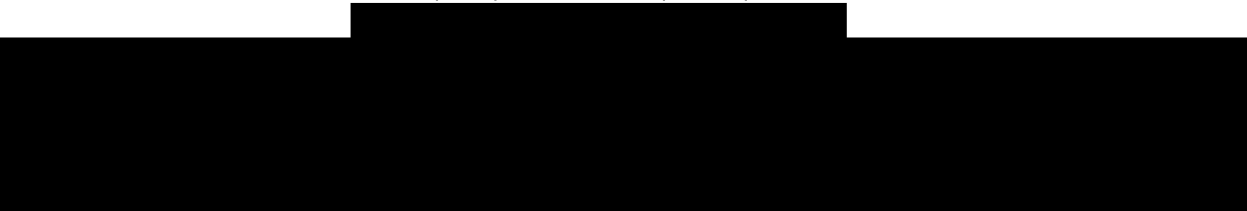
Lol. I'm the Sr Advisor to our Secretary. Let me know if you've gotten what you need as I was out of the office Friday.

Best,

Brigham

B. A. McCown
Consultant - Advisor to the Secretary
U.S. Department of Transportation
Office of the Secretary

West Building W92-319
1200 New Jersey Ave, S.E.
Washington, DC 20590
(202) 366-9315 (office)



Will do. Are Finch and Brig the comms folks? If not, who should our PR guy work with?

d

From: Smith, Loren (OST) [<mailto:Loren.Smith@dot.gov>]
Sent: Friday, March 3, 2017 8:25 AM
To: Schnare, David <schnare.david@epa.gov>; Fulton, Finch (OST) <Finch.Fulton@dot.gov>; McCown, Brigham (OST) <brigham.mccown@dot.gov>
Subject: Re: CAFE discussion draft: joint DOT-EPA notice

Dave, please make sure Finch and Brig are CC'd when you send it over.

Sent from my iPhone

On Mar 3, 2017, at 7:38 AM, Schnare, David <schnare.david@epa.gov> wrote:

Folks:

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Appendix:

EPA's regulation governing the Mid-Term Evaluation:

40 CFR 86.1818-12(h)

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Dravis, Samantha
Sent: Sat 3/4/2017 3:13:28 PM
Subject: Fwd: Actions approved to be sent to OFR for publication - 3/3/2017
[Actions Approved to send to OFR March 3 2017.xlsx](#)
[ATT00001.htm](#)

Please let me know if anything here looks amiss or does not comport with our discussion.

Begin forwarded message:

From: "Rees, Sarah" <rees.sarah@epa.gov>
Date: March 3, 2017 at 5:25:53 PM EST
To: "Dravis, Samantha" <dravis.samantha@epa.gov>
Cc: "Kenny, Shannon" <Kenny.Shannon@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Owens, Nicole" <Owens.Nicole@epa.gov>, "Corrales, Mark" <Corrales.Mark@epa.gov>, "Tyree, JamesN" <tyree.jamesn@epa.gov>
Subject: Actions approved to be sent to OFR for publication - 3/3/2017

Hi Samantha. Per our discussion this afternoon, this email memorializes the actions in our queue that received approval today to send to the Federal Register for publication. A couple of notes:

- We will start sending these to the Office of the Federal Register on Monday; because it is a long list they probably won't all make it over at once, but I don't think that is problematic; just wanted you to be aware.

- Some of the actions were signed by individuals who are no longer employed by EPA; the Office of the Federal Register is requiring that those actions be re-signed by a current EPA employee. I don't believe the email regarding delegations of signature would prevent an acting AA/RA from re-signing as we have approval to let these actions go; let me know if that is a problem. The actions that need to be re-signed are marked with asterisks in the signatory column.

Let me know if you have any questions about this; we will start sending these out to the Federal Register office on Monday.

Have a great weekend!

Cheers,

Sarah

Sarah L. Rees, Ph.D.

Director, Office of Regulatory Policy & Management

US EPA – Office of Policy

(202) 564-1986 (o) | (202) 407-5074 (m)

Actions in the FR Queue Cleared for Submittal to the Federal Register for Publication on 3/3/2017

Lotus Notes #	Priority (1-3)	Action Category	FRL	Title	Description	Deadline	Action Type	Signatory
51	2	SIP Approval	9958-79-Region 9	Approval and Revision of Air Plans; Arizona; Regional Haze State and Federal Implementation Plans; Reconsideration	Withdraws EPA's 2012 FIP imposing Best Available Retrofit Technology on the Cholla electrical generating station and approves Arizona's revised SIP for controlling emissions of NOx, SO2 and PM from the facility	4/22/2017	Final Rule	*Admin
52	3	SIP Approval	9958-65-Region 6	Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County; New Source Review (NSR) Preconstruction Permitting Program	Proposes to approve or conditionally approve various revisions to the NSR SIP for the City of Albuquerque /Bernalillo County		Proposed Rule	RA
53	3	SIP Approval	9958-60-Region 6	Approval and Promulgation of Implementation Plans; Louisiana; Volatile Organic Compounds Rule Revision and Stage II Vapor Recovery	Finalizes approval for Louisiana's revisions to its SIP provisions related to VOC and Stage II Gasoline Vapor Recovery		Direct Final Rule	RA
54	3	SIP Approval	9958-59-Region 6	Approval and Promulgation of Implementation Plans; Louisiana; Volatile Organic Compounds Rule Revision and Stage II Vapor Recovery	Concurrent NPRM to the Direct Final Rule (9958-60-Region 6)		Proposed Rule	RA
55	3	SIP Approval	9959-44-Region 9	Approval of California Air Plan Revisions, Antelope Valley Air Quality Management District	Proposes to approve the Antelope Valley Air Quality Management District Rule 2200 which provides a mechanism for obtaining documentation of emission reductions resulting from trip reduction programs		Proposed Rule	Acting RA
56	3	SIP Approval	9959-06-Region 10	Approval and Promulgation of Implementation Plans; Oregon: Permitting and General Rule Revisions	Proposes to approve revisions to the Oregon SIP	11/22/2016	Proposed Rule	*RA
57	3	SIP Approval	9959-10-Region 4	Air Plan Approval and Designation of Areas; KY; Redesignation of the Campbell County, 2010 1-Hour SO2 Nonattainment Area to Attainment	Approves Kentucky's plan for maintaining attainment of the 2010 1-hour sulfur dioxide NAAQS in the Campbell-Clermont, KY-OH area and redesignates the Kentucky portion of the area to attainment.	8/22/2017	Final Rule	Acting RA

58	3	SIP Approval	9958-92-Region 9	Approval of Arizona Air Plan Revisions, Arizona Department of Environmental Quality and Maricopa County Air Quality Department	Proposes to approve the Arizona DEQ and Maricopa County Air Quality District's changes to their SIPs to remove affirmative defense provisions related to excess emission during SSM events Note: This action is being taken in response to EPA's 2015 SSM SIP Call.	12/15/2017	Proposed Rule	Acting RA
59	3	SIP Approval	9958-93-Region 9	Approval of California Air Plan Revisions, San Joaquin Valley Unified Air Pollution Control District	Proposes to approve the San Joaquin Valley Unified Air Quality Management District (SJVUAPCD) Rule 4307 which has been revised to exempt tree-nut pasteurizers that are fired with LPG from emission limits, but not recordkeeping Note: EPA previously approved the exemption of natural gas-fired pasteurizers; approval of this rule will make the rule federally enforceable.	9/26/2017	Proposed Rule	RA
60	3	SIP Approval	9958-99-Region 9	Approval and Promulgation of Implementation Plans; California; California Mobile Source Regulations	Concurrent NPRM to the Direct Final Rule (9959-00-Region 9)	18 months after receiving SIP submittal	Proposed Rule	Acting RA
61	3	SIP Approval	9959-00-Region 9	Approval and Promulgation of Implementation Plans; California; California Mobile Source Regulations	Approves California's latest SIP revisions Note: The revisions do not impose any new requirements.	18 months after receiving SIP submittal	Direct Final Rule	Acting RA
62	3	SIP Approval	9959-02-Region 10	Air Plan Approval; Washington: General Regulations for Air Pollution Sources, Energy Facility Site Evaluation Council	Proposes approval of revisions in the Washington SIP, allowing the Energy Facility Site Evaluation Council (EFSEC) to issue nearly all Prevention of Significant Deterioration (PSD) permits independently without EPA co-signature.		Proposed Rule	*RA
63	3	SIP Approval	9959-05-Region 9	Approval of Nevada Air Plan Revisions, Clark County Department of Air Quality and Washoe County Health District	Proposes to approve the inclusion in Nevada's SIP revisions to two local rules related PM from fugitive dust	9/11/2016 (Clark Co); Late 2017 (Washoe Co)	Proposed Rule	Acting RA
64	3	SIP Approval	9958-80-Region 9	Approval of California Air Plan; Owens Valley Serious Area Plan for the 1987 24-Hour PM10 Standard	Finalizes approval for California's 2016 Owens Valley Planning Area PM-10 SIP Note: EPA is also approving the State's request for an extension of the attainment date to 6/6/2017	12/12/2017	Final Rule	Acting RA

65	3	SIP Approval	9958-81-Region 9	Approval of California Air Plan Revisions, Western Mojave Desert, Rate of Progress Demonstration	Proposes approval for the Western Mojave Desert SIP revision provisions containing a 15% rate of progress demonstration to address the 1997 8-hour Ozone NAAQS	March 2017 (SIP deadline was 5/6/2016)	Proposed Rule	Acting RA
66	3	SIP Approval	9958-72-Region 7	Approval of Missouri's Air Quality Implementation Plans; Open Burning Requirements	Finalizes approval of revisions to Missouri's SIP to incorporate a revised rule on open burning requirements	3/14/2013	Final Rule	RA
67	3	SIP Approval	9958-73-Region 1	Air Plan Approval; VT; Infrastructure State Implementation Plan Requirements	Proposes to finalize conditional approval of SIP infrastructure requirements submitted by Vermont with regards to several air quality standards	8/18/10 to 5/2/17 (various NAAQS stds)	Proposed Rule	RA
68	3	SIP Approval	9957-41-Region 6	Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Inspection and Maintenance Program Error Correction	Corrects a previously approved diesel inspection and maintenance (I/M) provision in Albuquerque/Bernalillo County's SIP	2/19/2018	Direct Final Rule	*RA
69	3	SIP Approval	9957-42-Region 6	Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Inspection and Maintenance Program Error Correction	Concurrent NPRM to the Direct Final Rule (9957-41-Region 6)	2/19/2018	Proposed Rule	*RA
70	3	SIP Approval	9957-55-Region 6	Proposal: Approval and Promulgation of Implementation Plans; Texas; El Paso Carbon Monoxide Limited Maintenance Plan	Concurrent NPRM to the Direct Final Rule (9957-56-Region 6)	3/21/2018	Proposed Rule	*RA
71	3	SIP Approval	9957-56-Region 6	Direct final rule: Approval and Promulgation of Implementation Plans; Texas; El Paso Carbon Monoxide Limited Maintenance Plan	Proposes to approve the second 10-year CO limited maintenance plan for the El Paso area	3/21/2018	Direct Final Rule	*RA

73	3	SIP Approval	9958-43-Region 9	Approval of California Air Plan Revisions, Yolo-Solano Air Quality Management District	Finalizes approval of revisions to the Yolo-Solano Air Quality Management District's (YSAQMD) portion of the California SIP		Final Rule	Acting RA
74	3	SIP Approval	9958-14-Region 5	Air Plan Approval; Minnesota; Sulfur Dioxide; Particulate Matter	Concurrent NPRM to the Direct Final Rule (9958-15-Region 5)	6/11/2017	Proposed Rule	Acting RA
75	3	SIP Approval	9958-15-Region 5	Air Plan Approval; Minnesota; Sulfur Dioxide; Particulate Matter	Approves the December 2015 submissions to revise Minnesota's SO2 and PM2.5 SIPs	6/11/2017	Direct Final Rule	Acting RA
76	3	SIP Approval	9958-09-Region 9	Air Plan Approval; Nevada, Lake Tahoe; Second 10-Year Carbon Monoxide Limited Maintenance Plan	Concurrent NPRM to the Direct Final Rule (9958-11-Region 9)	10/3/2013 (1st plan) 2/26/2018 (supplemental plan)	Proposed Rule	Acting RA
77	3	SIP Approval	9958-11-Region 9	Air Plan Approval; Nevada, Lake Tahoe; Second 10-Year Carbon Monoxide Limited Maintenance Plan	Approves the second 10-year maintenance plan for the CO national ambient air quality standards for the Nevada side of Lake Tahoe	10/3/2013 (1st plan) 2/26/2018 (supplemental plan)	Direct Final Rule	Acting RA
78	3	SIP Approval	9958-18-Region 9	Determination of Attainment and Approval of Base Year Emissions Inventories for the Imperial County, California Fine Particulate Matter Nonattainment Area	Concurrent NPRM to the Direct Final Rule (9958-21-Region 9)		Proposed Rule	Acting RA
79	3	SIP Approval	9958-21-Region 9	Determination of Attainment and Approval of Base Year Emissions Inventories for the Imperial County, California Fine Particulate Matter Nonattainment Area	Determines that the Imperial County, California Moderate Nonattainment Area (NAA) has attained the 2006 24-hour fine particulate matter NAAQS		Direct Final Rule	Acting RA
80	3	SIP Approval	9957-88-Region 4	Air Plan Approval; Georgia; Atlanta; Requirements for the 2008 8-Hour Ozone Standard	Concurrent NPRM to the Direct Final Rule (9957-89-Region 4)	8/6/2016	Proposed Rule	*RA
81	3	SIP Approval	9957-89-Region 4	Air Plan Approval; Georgia; Atlanta; Requirements for the 2008 8-Hour Ozone Standard	Approves part of a SIP submittal for the Atlanta 2008 8-hour ozone nonattainment area for nonattainment new source review (NNSR) requirements	8/6/2016	Direct Final Rule	*RA

82	3	SIP Approval	9957-84-Region 7	State of Iowa; Approval and Promulgation of the Title V Operating Permits Program, the State Implementation Plan, and 112(l) Plan	Makes technical corrections to Iowa SIP revisions	9/31/2017	Final Rule	RA
83	3	SIP Approval	9956-52-Region 9	Approval of California Air Plan Revisions, Ventura County Air Pollution Control District; Prevention of Significant Deterioration	Finalizes approval to revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California SIP	4/19/2017	Final Rule	Acting RA
84	3	SIP Approval	9955-98-Region 3	Air Plan Approval; District of Columbia; Update to Materials Incorporated by Reference	Updates the compilation of SIP materials for the District of Columbia	June 2017	Final Rule	*RA
	3	Delegation of Authority	9959-13-Region 4	ALABAMA: Final Authorization of State Hazardous Waste Management Program Revisions	Concurrent NPRM to the Direct Final Rule (9959-14-Region 4)		Proposed Rule	*RA
	3	Delegation of Authority	9959-14-Region 4	ALABAMA: Final Authorization of State Hazardous Waste Management Program	Grants authorization to the State of Alabama for revisions to its RCRA haz waste program		Direct Final Rule	*RA
	3	Delegation of Authority	9958-91-Region 3	Delegation of Authority to the State of West Virginia to Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards	Informs sources and the public that West Virginia has informed EPA of the State's latest adoption by reference of certain standards and that the State will implement and enforce them		Notice of Delegation of Authority	DD
	3	Delegation of Authority	9958-05-Region 5	ILLINOIS: Final Authorization of State Hazardous Waste Management Program Revision	Grants the State of Illinois Final Authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA)		Final Rule	Acting RA
	3	CROMERR Approval	9956-73-OEI	Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Montana	Announces approval for Montana's new National Primary Drinking Water Regulations Implementation e-reporting system		Notice of Approval	OD

12	3	CROMERR Approval	9956-84-OEI	Cross-Media Electronic Reporting: Authorized Program Revision Approval, Mecklenburg County	Announces approval for Mecklenburg County's new e-reporting system for all EPA-authorized air programs Note: The e-reporting system is an off-the-shelf system from a commercial vendor.		Notice of Approval	OD
	3	CROMERR Approval	9931-93-OEI	Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of North Carolina	Announces approval for North Carolina's voluntary NPDES e-reporting system		Notice of Approval	OD
	3	NPL Deletion	9958-96-Region 4	National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Perdido Ground Water Contamination Superfund Site	Finalizes Notice of Deletion with the concurrence from the State of Alabama for the Perdido Groundwater Contamination Superfund Site, which EPA has determined that all appropriate response actions under CERCLA have been completed		Direct Final Rule	RA
13	3	NPL Deletion	9959-04-Region 4	National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Perdido Ground Water Contamination Superfund Site	Concurrent NPRM to the Direct Final Rule (9958-96-Region 4)		Proposed Rule	RA
	3	Receipt of Information	9959-35-OCSPP	Receipt of Information Under the Toxic Substances Control Act	Documents two requests for exemption from testing requirements. Statutory requirements in TSCA 4(d) give EPA 15-days to issue the notice announcing receipt of information	3/2/2017	Notice of Receipt	DD
42	3	Receipt of Information	9958-32-OCSPP	Certain New Chemicals; Receipt and Status Information for December 2016	Documents receipt and status reports for 65 premanufacture notices (PMNs) and receipt of 10 notices of commencement (NOC) to manufacture chemicals submitted in Dec. 2016	90 days from receipt; estimated 3/30/2017 deadline.	Notice of Receipt	DD
	3	Receipt of Information	9958-90-Region 3	EPA-Mid-Atlantic Region III - Maryland Marine Sanitation Device Standard – Receipt of Petition	Petition through the MD DNR to designate the Chester River as a no discharge zone	8/18/2016; 90 days after receipt of petition (5/20/2016)	Notice - Receipt of Petition	RA

44	3	Receipt of Information	9958-69-OAR	Notification of Completeness of the Department of Energy's Compliance Recertification Application for the Waste Isolation Pilot Plant	Announces DOE has submitted a complete application for recertification of this plant Note: EPA is currently conducting a technical review to determine if the WIPP remains in compliance with the disposal regulations and will make a final recertification decision within six months of the completeness determination		Proposed Rule	OD
50	3	Signed by previous Admin	9958-29-OAR	Technical Correction to the National Ambient Air Quality Standards for Particulate Matter	Makes a technical correction to an equation that had an error, in an appendix to part 50, section 4.4(b) of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter		Final Rule	*Admin
20	3	Other	9959-16-OEI	Privacy Act of 1974; System of Records	Proposes to amend the Federal Docket Management System (FDMS) to move the FOIA tracking system into the FOIA Request and Appeal File system of records and to change the FDMS numbering system		Notice of Amendment	*CIO
24	3	Other	9959-75-Region 4	Adequacy Status of the Knoxville, TN 1997 Annual PM2.5 Maintenance Plan Motor Vehicle Emission Budgets for Transportation Conformity Purposes	Announces that it has found Tennessee's motor vehicle emissions budgets (MVEBs) contained in the SIP revision pertaining to the Knoxville 1997 24-hour PM2.5 nonattainment area to be adequate for transportation conformity purposes.	3/2/2017	Notice of Adequacy	Acting RA
	3	Other	9959-77-Region 4	Adequacy Status of the Knoxville, TN 2006 24-hour PM2.5 Maintenance Plan Motor Vehicle Emission Budgets for Transportation Conformity Purposes	Announces that it has found Tennessee's motor vehicle emissions budgets (MVEBs) contained in the SIP revision pertaining to the Knoxville 2006 24-hour PM2.5 nonattainment area to be adequate for transportation conformity purposes.	3/2/2017	Notice of Adequacy	Acting RA

25 *Action must be resigned

NOTE: New TSCA (9959-36-OCSP) and n-Propyl Bromide (9959-70-OAR) Comment Period Extensions were approved and sent to the FR on 3/1 and 2/28, respectively.

Cell: A2

Comment: Tyree, JamesN:

This column is strictly to aid for formatting purposes with Lotus Notes.

To: Schnare, David[schnare.david@epa.gov]
From: Catanzaro, Michael J. EOP/WHO
Sent: Fri 3/10/2017 6:22:48 PM
CAFE-FINAL FINAL-joint-notice-DOT-EPA_ca edits vmj.docx

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Jackson, Ryan
Sent: Wed 3/8/2017 5:15:44 PM
Subject: Re: Chlorpyrifos One-Pager

Armed with office of policy analysis and whatever chemicals provides in usda we will have a lot of paper in this from a couple of directions. I plan to supplement that too.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

On Mar 8, 2017, at 6:35 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Deliberative Process Privilege/Ex. 5

Sent from my iPhone

On Mar 7, 2017, at 10:18 PM, Schnare, David <schnare.david@epa.gov> wrote:

Deliberative Process Privilege/Ex. 5

dschnare

Sent from my iPhone

On Mar 7, 2017, at 5:51 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Making sure the three of you had this as well.

From: Schwab, Justin
Sent: Tuesday, March 7, 2017 4:04 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Fwd: Chlorpyrifos One-Pager

See attached, **Deliberative Process Privilege/Ex. 5**

Sent from my iPhone

Begin forwarded message:

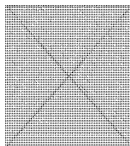
From: "Vaden, Stephen - OGC" <Stephen.Vaden@ogc.usda.gov>
Date: March 7, 2017 at 11:02:30 AM EST
To: "schwab.justin@epa.gov" <schwab.justin@epa.gov>
Subject: Chlorpyrifos One-Pager

Justin,

Attached, please find a brief document outlining **Deliberative Process Privilege/Ex. 5**

Deliberative Process Privilege/Ex. 5 As always, I am happy to discuss any of the points or put your staff in contact with our wonderful career people. They and I are willing to assist you in any way.

Stephen



Stephen Alexander Vaden

U.S. Department of Agriculture

Office of the General Counsel

Senior Adviser to the Office of General Counsel

Whitten Building, Suite 107W

' 202-720-3351 (Voice)

<image002.png>

202-720-8666 (Fax)

 stephen.vaden@ogc.usda.gov

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

<Revised Chlorpyrifos Revocation Questions_March 7 final.docx>

To: Schnare, David[schnare.david@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Sugiyama, George[sugiyama.george@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]
From: Dunham, Sarah
Sent: Thur 2/23/2017 12:10:40 AM
Subject: Re: Follow-ups to the Office of Air and Radiation briefing for Administrator Pruitt

Hi David. I'm not sure I totally understand the distinction you made below, and if the attachment made such a distinction I'm not sure it was intended. But I am happy to discuss further (and that may be helpful to make sure I understand your point). Feel free to call my cell Personal Phone/Ex. 6 or let me know when would be a good time to discuss.

Thanks
Sarah

Sent from my iPhone

On Feb 22, 2017, at 6:59 PM, Schnare, David <schnare.david@epa.gov> wrote:

Sara:

Deliberative Process Privilege/Ex. 5

dschnare

From: Dunham, Sarah
Sent: Wednesday, February 22, 2017 6:03 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>; Sugiyama, George <sugiyama.george@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>
Subject: Follow-ups to the Office of Air and Radiation briefing for Administrator Pruitt

Dear Ryan (and David, and George, and Mike)-

I hope the firehose you have been drinking from the past two days has not been too overwhelming. I wanted to follow-up on a couple of the more near-term items from this morning's briefing on the Office of Air and Radiation with you and Administrator Pruitt—we are trying to prioritize the follow-up items so as not to overwhelm you even more! We are keeping a list of the requests the Administrator made, and will make sure we don't forget about them. But there were three items that are most time sensitive.

(1) RFS Small Refinery Hardship Petitions: We flagged this morning that we would like

Deliberative Process Privilege/Ex. 5

(2) Oil and Gas Information Collection Request (ICR): We flagged this morning the

Deliberative Process Privilege/Ex. 5

(3) Regional Haze: I mostly wanted to get your sense of what would be most useful to

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Thanks Ryan, and please let me know if you have any questions, reactions, or suggestions for how you'd like to proceed on any of these areas, and specifically ways we can make this flood of information easier for you and the Administrator.

Sarah

Sarah Dunham

Acting Assistant Administrator

EPA Office of Air and Radiation

202 343 9301

202 236 1721

To: Schnare, David[schnare.david@epa.gov]
From: Kaplan, Robert
Sent: Fri 3/3/2017 3:51:08 PM
Subject: Re: Briefing on Flint and East Chicago

Got it. Thanks. Will do. There is chance I will be in Flint on Monday. Will figure it out.

Robert Kaplan
Acting Regional Administrator
EPA Region 5
Cell: 312-515-9827
Office: 312-886-1499

> On Mar 3, 2017, at 9:24 AM, Schnare, David <schnare.david@epa.gov> wrote:

>

> Considering the NRDC action, I suspect you are right.

>

> Bring up the need for a briefing at the Monday video conference and directly ask him for the opportunity to brief him. It's the best way to get on his calendar.

>

> d.

>

> -----Original Message-----

> From: Kaplan, Robert

> Sent: Friday, March 3, 2017 10:23 AM

> To: Schnare, David <schnare.david@epa.gov>

> Subject: Briefing on Flint and East Chicago

>

> David,

>

> I'm thinking that the Administrator should be brought up to speed on Flint and East Chicago. There is the potential for good news - and the potential for not so good news. Several critical junctures coming up. Bob

>

> Robert Kaplan

> Acting Regional Administrator

> EPA Region 5

> Cell: 312-515-9827

> Office: 312-886-1499

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Hull, George[Hull.George@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]
From: Gaines, Cynthia
Sent: Mon 3/13/2017 8:55:59 PM
Subject: Daily Reading File: March 13, 2017
[Daily Reading File.3.13.17.pdf](#)



Correspondence Management System

Control Number: AX-17-000-6047

Printing Date: March 13, 2017 01:38:56



Citizen Information

Citizen/Originator: Williams, Lynden S.

Organization: Ohio University
Address: 1240 River Road, Buhl, ID 83316

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-6047
Status: Pending
Due Date: Mar 28, 2017
Letter Date: Mar 4, 2017
Addressee: AD-Administrator
Contact Type: LTR (Letter)
Signature: DX-Direct Reply
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Alternate Number: N/A
Closed Date: N/A
of Extensions: 0
Received Date: Mar 10, 2017
Addressee Org: EPA
Priority Code: Normal
Signature Date: N/A
Subject: DRF - Low dose arsenic impact on cancer mortality
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OCIR - Office of Congressional and Intergovernmental Relations
OPA - Office of Public Affairs
ORD - Office of Research and Development -- Immediate Office
R5 - Region 5 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OW	Mar 13, 2017	Mar 28, 2017	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					
Wanda Fields	OW	OW-OGWDW	Mar 13, 2017	Mar 28, 2017	N/A
Instruction: N/A					

Supporting Information

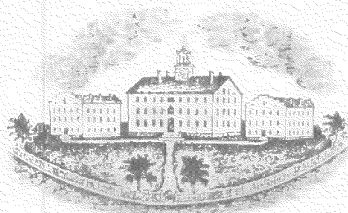
Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

Department of Geography

Clippinger Laboratories 122
Athens OH 45701-2979
740-593-1140 phone
740-593-1139 fax
www-as.phy.ohiou.edu/
Departments/Geography/



OHIO UNIVERSITY

RECEIVED

2017 MAR 10 AM 11:27

OFFICE OF THE
EXECUTIVE SECRETARIAT

March 4, 2017

Mr. Scott Pruitt, Director
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Mr. Scott Pruitt:

Over the past decade I have spent thousands of hours investigating the low dose arsenic impact on cancer mortality; I have not received any grant monies or income from any source for this work. My first study dealt with the 44 Idaho counties. I did not find any positive correlation between arsenic levels and cancer mortality; the surprise was an inverse correlation for male colon cancer mortality. The Idaho counties do not provide an adequate statistical sample, so I expanded to all US counties, limiting to those with populations of 5,000 or more, where half or more of the population is dependent upon ground water, and where data were available from USGS on arsenic levels and from the Atlas of Cancer Mortality (by the NCI) providing a sample of 588 counties. I was shocked to find that mortality rates for many cancer types were inversely associated with arsenic levels (including most of those the EPA says are associated with higher cancer mortality). That study included all cancer types; I am currently rewriting that paper to include only those cancer types the EPA says are positively associated with low level arsenic in drinking water. I will send you a copy of the full paper at your request, or send a copy of my rewrite when that is finished.

I have been in close contact with epidemiologist Dr. Steven Lamm who has produced several papers showing that arsenic in drinking water at levels below 100 ppb are not associated with higher cancer rates, and are often significantly associated with lower rates. The EPA was charged by congress to conduct a low dose arsenic/cancer study. The EPA used Taiwan data, grouping villages together and the median arsenic level (rather than the average) so that they could include a number of villages with 500+ ppb, and thereby get a positive correlation. Dr. Steven Lamm requested to see those data and the EPA refused. He used the FOIA to obtain those data and found that when the villages with 500+ ppb were removed from the study the association was actually negative. I have copies of that study and most of Lamm's other studies, and he has given me permission to forward those (assuming he has not already done so).

The possibility that arsenic in small dosages could act as an anti-tumor agent or anti-carcinogen is not a novel idea. Arsenic has been used to treat cancer and other diseases for hundreds of years and arsenic trioxide (AsO_3) was approved by the FDA in 2000 for treatment of relapsed acute promyelocytic Leukemia. Marczyński has suggested a mechanism of action that could cause arsenic to act as a naturally occurring anti-tumor agent (Carcinogenesis as the Result of the Deficiency of some Essential Trace Element, Medical Hypotheses, Vol. 26, 239-249) Arsenic is known to be an essential nutrient for

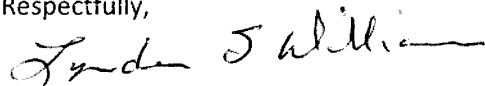
the goat, pig, rat, and chicken, and studies have suggested it may have a similar role in human nutrition (Uthus, E. Evidence for Arsenic Essentiality, Environmental Geochemistry and Health, Vol. 14, 55-58).

I cannot tell you how frustrating it has been to attempt to get the EPA to respond on this issue. I have enlisted support from Idaho congressmen who have forced the EPA to respond to a series of questions on this (I will forward a copy of those questions and the EPA response at your request). Basically the EPA attempted to avoid a direct response to all questions. As volunteer water operator in my community I attended a class that dealt with the arsenic issue provided by the DEQ (Idaho's EPA); included in the EPA PowerPoint presentation was a picture of an oriental woman with blackfoot disease. I pointed out to the instructor that we have never had a case of blackfoot disease in Idaho (or anywhere else in the US to my knowledge) and the picture was probable taken in Taiwan. That picture was subsequently deleted from the PowerPoint presentation (but I have a copy of the original PowerPoint presentation which I will forward to you at your request). Shortly after sending copies of my study to the EPA the arsenic file in the USGS online data was deleted and I am not able to find it on the web (but that does not prove it is not available on the web; I am not a computer expert). In any case I still have a copy of the USGS 'National Analysis of Trace Elements, Arsenic in Ground Water in the U.S.' which I will forward to you at your request.

The reduction in the MCL for arsenic from 50 to 10 ppb affected more than 1,000 communities mostly in the west and imposed costs of millions of dollars to each of those towns and cities (for many billions of dollars in unfunded mandates). The city of Buhl (near my home) struggled to pay that bill, and I am told by water operators in Buhl that the doubling of the water rates is even more damaging to the community. In our community (Kanaka Rapids Ranch) enforcement of the 10 ppb MCL for arsenic would have bankrupted the community; we would have been required to put our water into tanks for treatment (losing the blessing of geothermal water which most of us use to run heat pumps). The DEQ (Idaho's EPA) finally allowed us to install reverse osmosis systems for drinking water. (Originally, they said the RO system would require water operator to have access to all homes 24/7 knowing that no rational person would accept that condition.)

I have noticed that no person in authority at EPA or DHHS will acknowledge having examined the research on arsenic/cancer or acknowledge having seen my studies or those of Steven Lamm. Do you suppose they know the truth will one day be known and want to say they never examined those studies? I wonder if I am telling you something you don't already know!

Respectfully,



Dr. Lynden S. Williams, Professor Emeritus, Ohio University
1240 River Rd., Buhl ID 83316
lynw@safelink.net; (208) 543-2818



Correspondence Management System

Control Number: AX-17-000-6085

Printing Date: March 13, 2017 10:41:51



Citizen Information

Citizen/Originator: Bernetich, John

Organization: Ayres Law Group LLP
Address: 1536 Wynkoop Street, Denver, CO 80202

Ayres, Richard

Organization: Ayres Law Group LLP
Address: 1401 K Street, NW, Washington, DC 20005

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-6085
Status: Pending
Due Date: Mar 28, 2017
Letter Date: Mar 10, 2017
Addressee: AD-Administrator
Contact Type: EML (E-Mail)
Signature: DX-Direct Reply
File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.
Subject: DRF - Response of Honeywell International Inc. to Petition for Reconsideration by the Air Permitting Forum; Docket No. EPA-HQ-OAR-2015-0453
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: Kristien Knapp - AO-IO
OGC - Office of General Counsel -- Immediate Office
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OAR	Mar 13, 2017	Mar 28, 2017	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

**BEFORE THE ADMINISTRATOR OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**In re: Protection of Stratospheric Ozone:
Update to the Refrigerant Management
Requirements Under the Clean Air Act,
81 Fed. Reg. 82,272 (Nov. 18, 2016)**

)
)
) DOCKET NO.
) EPA-HQ-OAR-2015-0453
)
)

**RESPONSE OF HONEYWELL INTERNATIONAL INC. TO
PETITION FOR RECONSIDERATION
BY THE AIR PERMITTING FORUM**

Richard E. Ayres
Jessica L. Olson
AYRES LAW GROUP LLP
1401 K Street NW, Suite 825
Washington, DC 20005
(202) 452-9200
ayresr@ayreslawgroup.com
olsonj@ayreslawgroup.com

John H. Bernetich
AYRES LAW GROUP LLP
1536 Wynkoop Street, Suite 528
Denver, CO 80202
(720) 504-3002
bernetichj@ayreslawgroup.com

*Counsel for Honeywell International
Inc.*

Dated: March 10, 2017

I. Introduction and Background

On January 17, 2017, the Air Permitting Forum (APF) filed a Petition for Reconsideration of EPA's rule entitled *Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements Under the Clean Air Act*, 81 Fed. Reg. 82,272 (Nov. 18, 2016).¹ APF argues that EPA should reconsider the rule to the extent it (1) extends refrigerant management requirements to apply to substitutes for class I and II substances²; (2) amends the definition of "appliance" to include "motor vehicle air conditioner"³; and (3) adds certain recordkeeping and reporting requirements.⁴

Under section 307(d)(7)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7607(d)(7)(B), EPA must convene a reconsideration proceeding if a petitioner raises an objection that (1) was impracticable to raise during the public comment period or the grounds for which arose after the close of the public comment period (but within 60 days of the same), *and* (2) is of central relevance to the outcome of the rule. None of APF's arguments meets these requirements. Indeed, for many of its arguments APF ignores the statutory standard entirely. For the few points where APF does address the standard, it fails to demonstrate that it has met the statutory requirements. Accordingly, EPA should deny the Petition.

Honeywell International Inc. ("Honeywell") is a global leader in providing technologies and innovations that can help the world solve energy and environmental challenges. Honeywell's Fluorine Products business is a recognized leading innovator in the development of environmentally preferable fluorocarbons for use as refrigerants, foam blowing agents, solvents, propellants, and other uses. Honeywell commented on the proposed rule.⁵

II. APF Impermissibly Challenges EPA's Authority to Promulgate the Rule

Disregarding entirely the legal standard for granting reconsideration, APF argues that EPA lacks authority to regulate substitutes under the refrigerant management program.⁶ APF makes no effort to demonstrate that it has met the prerequisites for reconsidering the rule. Indeed, the petition merely rehashes arguments, often verbatim, that make up a significant portion of APF's comments on the proposed rule, demonstrating irrebuttably that it was not impracticable to raise these arguments during the public comment period and that the objections did not arise after the public comment period. EPA should deny this portion of the petition on that basis alone.

¹ Petition for Reconsideration by the Air Permitting Forum, Docket ID No. EPA-HQ-OAR-2015-0453-0228 (Jan. 17, 2017) ("Petition"). APF has also filed a petition for judicial review of the rule. *Air Permitting Forum v. EPA*, D.C. Cir. No. 17-1017 (consolidated under No. 17-1016).

² Petition at 1-6.

³ Petition at 6-7.

⁴ Petition at 7-10.

⁵ Comments of Honeywell International Inc., Docket ID No. EPA-HQ-OAR-2015-0453-0077 (Jan. 25, 2016).

⁶ Petition at 1-6.

Putting aside the failure to meet the statutory requirements for reconsideration, APF has also failed to show that EPA lacks the authority to regulate substitutes. The plain terms of CAA § 608(c), 42 U.S.C. § 7671g(c), combined with EPA's general authority to issue regulations necessary to implement the CAA, permit EPA to issue refrigerant management regulations applicable to substitutes. Taking this action allows for a coherent regime that addresses the release of the full range of ozone depleting substances (ODS) and substitutes in use. ODS and substitutes can be used interchangeably in many cases, and clear regulation of the former with uncertain regulation of the latter would undermine such a coherent regime.

EPA's authority is derived primarily from section 608(c), which prohibits knowingly venting, releasing, or disposing of a substitute during maintenance, service, repair, or disposal of equipment. This authority is complemented by CAA § 301(a)(1), 42 U.S.C. § 7601(a)(1), under which EPA has the authority "to prescribe such regulations as are necessary to carry out [its] functions" under the CAA. Read together, these sections give EPA authority to prohibit knowing venting of substitutes, and the authority to issue regulations "necessary to carry out" that prohibition.

The final rule is a reasonable exercise of that authority. In 1993, EPA issued regulations providing clarity on what conduct violates the venting prohibition and what is a permissible *de minimis* release.⁷ At the time of the 1993 rulemaking, the substitutes regulated by the final rule at issue here were not widely used, and therefore it was reasonable for EPA not to extend the rulemaking to such substitutes. Until the issuance of the present final rule, the 1993 regulations applied to class I and II substances, but not to substitutes, even though the two are used interchangeably in many instances and even though a service technician might not be aware of the distinction. Such fragmentary regulation led to substantial uncertainty. The regulated community, for instance, had the benefit of clear regulatory guidance regarding when a release of a class I or II substance violates the venting prohibition. As to substitutes, however, no such guidance existed. In light of this uncertainty, EPA determined it was "necessary" to issue regulations "to carry out" its authority under section 608(c) to prohibit venting of substitutes.

APF takes issue with adding substitutes to the existing refrigerant management program applicable to class I and II substances. This argument is nothing more than a semantic quibble. As demonstrated above, EPA has the authority to (1) prohibit venting of substitutes, as well as (2) issue regulations necessary to carry out that authority. EPA could have established a different regime for substitutes, but the agency reasonably determined it would be more efficient to simply extend the existing refrigerant management program to apply to substitutes. APF apparently would have EPA create a separate subchapter within the Code of Federal Regulations that is in all respects identical to subchapter F (applicable to class I and II substances), except that the new subchapter would apply to substitutes. Of course, such an action would be entirely within EPA's section 608(c) and 301(a)(1) authority. But EPA quite reasonably determined instead to utilize its existing program and simply extend it to apply to substitutes.

⁷ 58 Fed. Reg. 28,660.

EPA's determination to regulate substitutes under the refrigerant management program is entirely reasonable and within its Clean Air Act authority. EPA should thus deny this portion of APF's Petition.

III. APF's Claims With Respect to the Final Amended Recordkeeping Requirements in 40 C.F.R. § 82.156(a)(3) Do Not Require Reconsideration

In the final rule, EPA established requirements for recordkeeping by technicians that evacuate refrigerant from appliances with a refrigerant charge of more than five pounds and less than 50 pounds.⁸ APF makes three arguments for reconsideration of this provision, none of which have merit. First, the Petition argues that EPA "has failed to show that additional recordkeeping will ensure a better level of management . . . than both the rules currently in place and the over-arching facility systems that manage them."⁹ Second, the Petition argues that EPA impermissibly "added extensive new claims regarding the need for this provision" and that APF did not have an opportunity to comment.¹⁰ Third, APF argues that EPA did not respond to comments regarding the agency's basis for expanding the recordkeeping requirement down to units containing five or more pounds of refrigerant.¹¹ None of these claims provides sufficient reason for reconsideration.

APF has made no effort to demonstrate that it was "impracticable to raise" its first objection during the comment period. Indeed, APF's Petition uses language identical to that of its own comments on the proposed rule with respect to the additional recordkeeping requirement finalized in section 82.156(a)(3).¹² Clearly, therefore, it was not impracticable to raise such arguments during the comment period, and APF's objection cannot serve as a basis for reconsideration. APF will have the opportunity to present this objection before the court in the judicial review proceeding.

The claim that APF did not have a chance to respond to "extensive new claims" added by EPA to justify its final recordkeeping provision is no more convincing.¹³ Actually, in the final rule EPA *reduced the burden* of the proposed recordkeeping requirement by eliminating a proposal to require technicians to measure and record the quantity of refrigerant evacuated in the field. The proposal was replaced with a requirement to weigh cylinders of recovered refrigerant and record the total amount recovered on a monthly basis.

⁸ 40 C.F.R. § 82.156(a)(3).

⁹ Petition at 8. APF characterizes section 82.156(a)(3) as regulating "units upwards of 5 pounds." This section, however, applies to "appliances with a full charge of more than 5 and less than 50 pounds of refrigerant."

¹⁰ Petition at 8 (citing 82 Fed. Reg. at 82,312-13).

¹¹ Petition at 8-9.

¹² See Petition at 7-8 and Comments of Air Permitting Forum and Auto Industry Forum, Docket ID No. EPA-HQ-OAR-2015-0453-0083 (Jan. 25, 2016) ("APF Comments") at 15.

¹³ Petition at 8.



Correspondence Management System

Control Number: AX-17-000-6098

Printing Date: March 13, 2017 04:33:20



Citizen Information

Citizen/Originator: Seitter, Keith L.

Organization: American Meteorological Society
Address: 45 Beacon Street, Boston, MA 02108-3693

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-6098
Status: Pending
Due Date: Mar 28, 2017
Letter Date: Mar 13, 2017
Addressee: AD-Administrator
Contact Type: EML (E-Mail)
Signature: DX-Direct Reply
File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.
Alternate Number: N/A
Closed Date: N/A
of Extensions: 0
Received Date: Mar 13, 2017
Addressee Org: EPA
Priority Code: Normal
Signature Date: N/A
Subject: DRF - Scientific evidence of the rapid change in climate
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
Kristien Knapp - AO-IO
OAR - Office of Air and Radiation -- Immediate Office
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OPA	Mar 13, 2017	Mar 28, 2017	N/A
Instruction: N/A					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
-----------	--------	--------	------



AMERICAN METEOROLOGICAL SOCIETY

45 BEACON STREET, BOSTON, MA 02108-3693 U.S.A.

Tel: 617-227-2425
Fax: 617-742-8718
E-mail: amsinfo@ametsoc.org
Web: www.ametsoc.org

KEITH L. SEITTER, Executive Director
E-mail: kseitter@ametsoc.org

13 March 2017

Scott Pruitt, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt,

In a recent CNBC interview, you stated that you do not agree that carbon dioxide is the primary driver of the global warming revealed by the temperature records over recent decades. In reality, the world's seven billion people are causing climate to change and our emissions of carbon dioxide and other greenhouse gases are the primary cause. This is a conclusion based on the comprehensive assessment of scientific evidence. It is based on multiple independent lines of evidence that have been affirmed by thousands of independent scientists and numerous scientific institutions around the world. We are not familiar with any scientific institution with relevant subject matter expertise that has reached a different conclusion. These indisputable findings have shaped our current AMS Statement on Climate Change, which states¹:

It is clear from extensive scientific evidence that the dominant cause of the rapid change in climate of the past half century is human-induced increases in the amount of atmospheric greenhouse gases, including carbon dioxide (CO₂), chlorofluorocarbons, methane, and nitrous oxide. The most important of these over the long term is CO₂, whose concentration in the atmosphere is rising principally as a result of fossil-fuel combustion and deforestation.

We understand and accept that individuals and institutions both public and private can reach differing conclusions on the decisions and actions to be taken in the face of this reality. That's the nature of the political process in a democratic society. But mischaracterizing the science is not the best starting point for a constructive dialogue. We hope that you will reconsider your stance on the science, and then help lead the nation and the world to consider, first, options for action, and then the course to be followed.

The American Meteorological Society and its members have been working on all aspects of this science going back a century. We stand ready to work with you or your staff to advance understanding the science of climate and use those advances for the benefit of the nation and the world.

Sincerely,

Keith L. Seitter
Executive Director

¹ <https://www.ametsoc.org/ams/index.cfm/about-ams/ams-statements/statements-of-the-ams-in-force/climate-change/>

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]
From: Schwab, Justin
Sent: Mon 3/6/2017 1:53:03 PM
Subject: Re:

Sure. I'm free before 11, from 2-3:30, and after 4:30

Sent from my iPhone

On Mar 6, 2017, at 8:52 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Should we find some time to rendezvous today and touch base on things? Let me know what your day looks like. Thank you!

To: Adm14Pruitt, Scott[adm14pruitt.scott@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]; Benton, Donald[benton.donald@epa.gov]
From: Martinez, Isidra
Sent: Mon 3/6/2017 11:22:12 PM
Subject: Requested Transmittal to OMB of the FY16 GLRI Report to Congress
FY2016 Great Lakes Restoration Initiative Progress Report to Congress an....pdf
FY16 Great Lakes Restoration Initiative Progress.pdf

Administrator Pruitt,

The purpose of this email is to request the transmittal to OMB of the FY 2016 Great Lakes Restoration Initiative Progress Report to Congress and the President. We have incorporated previous edits by EPA Headquarters.

EPA is required by the 2010 Appropriations Conference Report, 111-316, to submit a report pertaining to the Great Lakes Restoration Initiative to Congress and the President on behalf of the Great Lakes Interagency Task Force. The Conference Report directs EPA to provide detailed yearly GLRI program accomplishments and compare specific funding levels allocated for participating federal agencies from fiscal year to fiscal year. A brief memo from me as Acting Great Lakes National Program Manager is also attached which provides an overview of the Great Lakes Restoration Initiative (GLRI) progress and accomplishments through Fiscal Year 2016.

- Bob Kaplan

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Cell: 312-515-9827

Direct: 312-886-1499

Main: 312- 886-3000

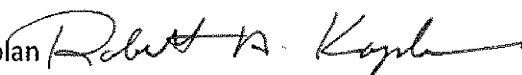


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

Memorandum

REPLY TO THE ATTENTION OF:

Subject: FY2016 Great Lakes Restoration Initiative Progress Report to Congress and the President

From: Robert A. Kaplan 
Acting Great Lakes National Program Manager
Acting Regional Administrator – Region 5

To: Scott Pruitt
Administrator

The purpose of this memorandum is to formally request the transmittal of the FY 2016 Great Lakes Restoration Initiative Progress Report to Congress and the President for review and clearance to OMB. The Great Lakes National Program Office has incorporated previous edits by EPA Headquarters.

EPA is required by the 2010 Appropriations Conference Report, 111-316, to submit a report pertaining to the Great Lakes Restoration Initiative to Congress and the President on behalf of the Great Lakes Interagency Task Force. The Conference Report directs EPA to provide detailed yearly GLRI program accomplishments and compare specific funding levels allocated for participating federal agencies from fiscal year to fiscal year.

The attached Report to Congress and the President presents an overview of the Great Lakes Restoration Initiative (GLRI) progress and accomplishments through Fiscal Year 2016. It includes information from the U.S. Environmental Protection Agency (EPA) and its federal partners on funding, project accomplishments in the form of success stories, and performance on GLRI Action Plan Measures of Progress.

The report highlights quantitative progress in each of the five focus areas of GLRI Action Plan II:

Toxic Substances and Areas of Concern - Projects to address contaminated sediments in communities are carried out under the GLRI (CWA 118(c)(7)(B)(i)), the Great Lakes Legacy Act (CWA 118(c)(12)), and Annex 1 (Areas of Concern) of the binational Great Lakes Water Quality Agreement.

Prior to the start of the GLRI in FY 2010, only one of 31 US AOCs had been cleaned up or “delisted” and only 10 beneficial use impairments (BUIs) of a total of 255 had been removed. Since 2010, the Presque Isle (PA), Deer Lake (MI), and White Lake (MI) AOCs have been delisted. Federal agencies and their partners have also completed the cleanup and restoration actions necessary for delisting four additional AOCs. In addition, since 2010, 58 BUIs at AOCs have been removed, more than five times the total removed in the preceding 22 years.

Working with other federal agencies, state and local governments, and the private sector, EPA has invested through the Great Lakes Legacy Act over \$360 million and leveraged an additional \$240 million in non-federal dollars to clean up AOCs. As a result, over 4 million cubic yards of contaminated sediment has been remediated through the Great Lakes Legacy Act, which is funded through the GLRI. The AOC program is a great example of financing through public-private partnerships to address contaminated communities and create jobs.

Invasive Species - Invasive species work under the GLRI (CWA 118(c)(7)(B)(ii)), and Annex 6 (Aquatic Invasive Species) of the Great Lakes Water Quality Agreement, controls terrestrial and aquatic invasive species such as Asian carp which threaten the economic vitality of the \$7 billion Great Lakes sport and recreational fishery.

During the first six years of the GLRI, federal agencies and their partners engaged in activities to prevent new introductions of invasive species from getting into the Great Lakes ecosystem and to control those already in the Great Lakes. Since 2010, GLRI partners implemented invasive species control activities on over 115,800 acres.

In addition, the GLRI provides support to the Asian Carp Regional Coordinating Committee (ACRCC), a binational, multi-jurisdictional collaborative partnership of 27 Federal, State, and Provincial partners working to prevent the introduction, establishment, and spread of Asian carp populations in the Great Lakes.

The ACRCC annually prepares an Asian Carp Action Plan intended to prevent the introduction, establishment, and spread of Bighead, Black, Grass, and Silver Carp populations in the Great Lakes and across the nation. To date, over 5.1 million pounds of Asian carp have been removed from the Upper Illinois River, thereby reducing the threat of invasion. Currently public-private partnerships are being pursued to remove even a greater number of Asian carp.

GLRI efforts have been critical to controlling existing invasive species such as the sea lamprey and preventing establishment of new species such as Asian carp, which can jeopardize the Region's valuable sports fishery (\$7 billion annually).

Nonpoint Source Pollution Impacts on Nearshore Health - Work under the GLRI (CWA 118(c)(7)(B)(iii)) and Annex 4 (Nutrients) of the Great Lakes Water Quality Agreement reduces phosphorous and other nutrient pollution to reduce harmful algal blooms and protect drinking water infrastructure and prevent beach closings throughout the Great Lakes. Excessive nutrient loadings from urban and agricultural areas have caused a resurgence of algal blooms resulting in thick odorous mats of green algae; outbreaks of avian botulism; threats to drinking water supplies; limitations on recreational uses, including beach closings; oxygen depletion in off-shore waters, and other water quality impairments. In recent years, this resurgence has occurred in multiple nearshore areas of the Great Lakes, particularly in watersheds in the Lower Fox River (WI), Saginaw River (MI), and Maumee River (OH). The most pronounced harmful algal bloom (HAB) problems have been in Western Lake Erie, epitomized by issuance of an August 2014 "do not drink" order by the city of Toledo, OH.

Since 2015, GLRI has implemented projects that have resulted in:

- a projected reduction of over 402,000 pounds of phosphorus which contributes to harmful algal blooms around the Great Lakes in priority watersheds.
- a projected volume of over 116,000,000 gallons of untreated urban runoff being captured or treated, preventing pathogens and pollutants from entering the Great Lakes.

In addition, GLRI activities support a collaborative effort under Annex 4 of the GLWQA with state, provincial and federal environmental and agricultural agencies in the US and Canada to significantly reduce phosphorus loads to prevent algal blooms in the western Lake Erie basin. In 2016, this GLWQA collaboration established a target to reduce phosphorus loads to the western and central basins of Lake Erie by 40 percent. EPA is currently working with State and federal partners to develop domestic action plans (DAPs) to achieve the reduction target. These DAPs must be in place by 2018. Ohio and Michigan DAPs are expected to demonstrate their commitment to achieving the reduction target by 2025.

Habitat and Species - Work under GLRI (CWA 118(c)(7)(B)(iv)) and Annex 7 (Habitat and Species) of the Great Lakes Water Quality Agreement builds habitat (e.g. coastal wetlands) and protects native species. Current Great Lakes habitats do not meet the growth and reproductive needs of fish and wildlife. Habitat and species have been impacted by development, competition from invasive species, the alteration of natural lake level fluctuations and flows from dams and other control structures, toxic compounds, poor land management practices, and nonpoint sources of pollution. These impacts have led to an altered food web, loss of biodiversity, and poorly functioning ecosystems, with attendant impacts to commercial and recreational fishing. Since 2010, more than 4,600 river-miles have been cleared for fish passage and more than 175,000 acres of habitat have been protected, restored, or enhanced. The GLRI advances protection of the Region's coastal wetlands, an ecologically significant habitat for over 80 species of fish, and valuable sports fishery (\$7 billion annually).

Foundations for Future Restoration Actions - The CWA Section 118(c)(1)(B) requires the Great Lakes National Program Office to establish a Great Lakes system wide surveillance network and implement ongoing monitoring of the water quality of the Great Lakes.

GLRI partners annually implement coordinated, intensive science and monitoring plans for each Great Lake. We know from past experience that continued attention must be paid to the health of the Great Lakes so that new and potential threats can be identified and action can be taken quickly to limit their impacts to this valuable resource.

Protection and restoration of the Great Lakes is vital to the region's freshwater supply and economy. The Great Lakes economy is one of the largest economic units on earth (with a \$4.5 trillion gross regional product). The direct economic benefits of restoring the Great Lakes total at least \$50 billion, considering factors such as reduced costs for drinking water treatment; new dollars from tourism, commercial fishing, and recreation; increased coastal property values; cost savings for municipalities; and jobs.

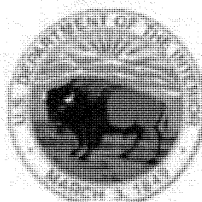
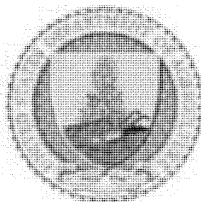
If there are any questions regarding this report please feel free to contact me.

Great Lakes RESTORATION



Great Lakes Restoration Initiative Report to Congress and the President

Fiscal Year 2016



CONTENTS

Message from the Chair of the Great Lakes Interagency Task Force.....	2
Section 1 - Executive Summary.....	3
Section 2 - Program Accomplishments.....	5
Focus Area 1: Toxic Substances and Areas of Concern.....	5
Focus Area 2: Invasive Species.....	9
Focus Area 3: Nonpoint Source Pollution Impacts on Nearshore Health.....	13
Focus Area 4: Habitat and Species.....	17
Focus Area 5: Foundations for Future Restoration Actions.....	21
Section 3 – Planned Activities.....	25
Section 4 – Financial Reporting.....	26
Appendix A – GLRI Action Plan II: Measures of Progress.....	29

About This Report

This report presents an overview of the Great Lakes Restoration Initiative progress. It includes information on funding, project accomplishments and success stories, and performance on Action Plan Measures of Progress through Fiscal Year 2016. Data on direct spending is taken from the U.S. Environmental Protection Agency financial systems. Information on Great Lakes Restoration Initiative projects and activities is available at <http://glri.us>.

The U.S. Environmental Protection Agency is required by the 2010 Appropriations Conference Report, 111-316, to submit this report to Congress on behalf of the Great Lakes Interagency Task Force. The Conference Report directs the Agency to provide detailed yearly program accomplishments and compare specific funding levels allocated for participating federal agencies from fiscal year to fiscal year.

The report also satisfies the Action Plan II Measure of Progress for issuance of annual GLRI reports to Congress and the President.

MESSAGE FROM THE CHAIR OF THE GREAT LAKES INTERAGENCY TASK FORCE

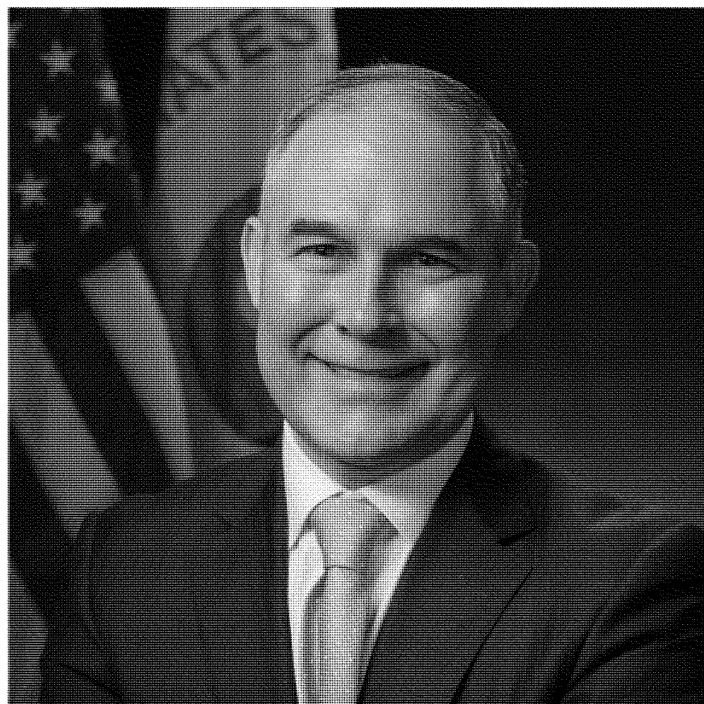
As we now understand more than ever, we do not have to choose between the health of our environment and the health of our economy. We can and should have both.

I am proud that through the Great Lakes Restoration Initiative (GLRI)—helping to protect and restore the system that comprises more than 80 percent of the fresh water in the U.S. and Canada—we are fulfilling our mission to restore the health of the water that so many of our communities depend on.

Thanks to resounding bipartisan support, 11 federal departments and their partners from states, tribes, municipalities, businesses, citizens' organizations, academia and others are breaking through to restore the Great Lakes after decades of damage. These investments—more than \$2.2 billion supporting more than 3,500 projects—are making a tremendous difference from Isle Royale National Park to the mouth of the St. Lawrence River and points in between.

As this Progress Report to Congress and the President shows, the GLRI is responsible for cleaning up some of the most contaminated sites in the world—areas that, once restored, will increase property values and property tax bases. This program is also preventing the introduction of silver and bighead carp, species that could do irreparable harm to the region's economy and ecology if they enter the lakes. And GLRI is reducing nutrient runoff to our most sensitive waterways, such as Lake Erie, Saginaw Bay, and Green Bay.

The GLRI is protecting public health in the Great Lakes more than any other coordinated interagency effort in U.S. history. With continued support, restoration will follow its trajectory of success far into the future. And we'll help ensure that our children and their children live in safer, healthier communities.

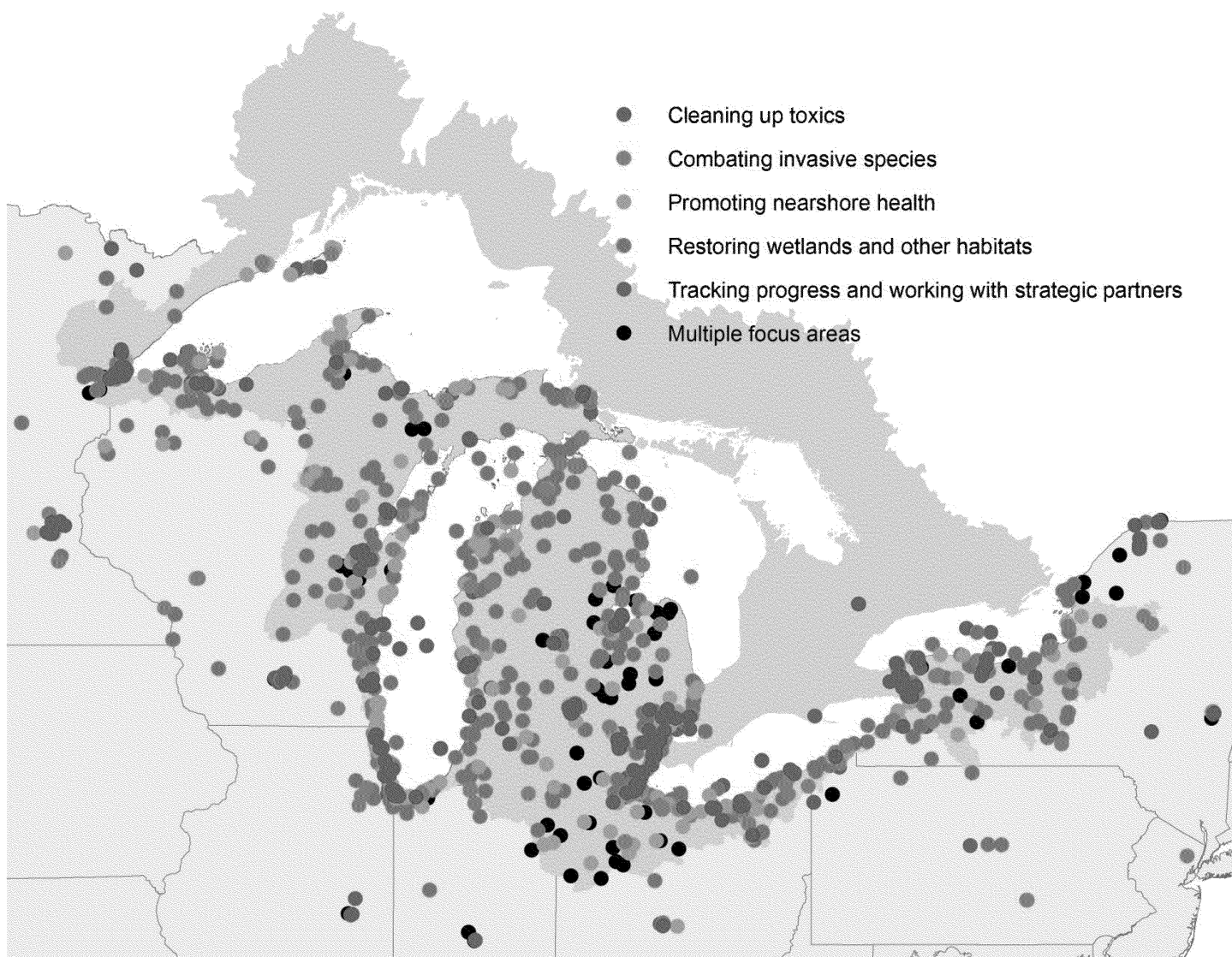


Scott Pruitt

Chair, Great Lakes Interagency Task Force

Administrator, U.S. Environmental Protection Agency

Great Lakes Restoration Initiative Projects from FY 2010 – FY 2016



Section 1 –Executive Summary

The Great Lakes Restoration Initiative, or the GLRI, was launched in 2010 to accelerate efforts to protect and restore the largest system of fresh surface water in the world, the Great Lakes. The GLRI is critical to addressing the most persistent and challenging environmental problems facing this important ecosystem.

The GLRI has been a catalyst for unparalleled federal agency coordination – through both the Interagency Task Force (IATF) and the Regional Working Group (RWG), which are led by the EPA. This coordination has produced unprecedented results. GLRI resources have supplemented agency base budgets that have funded over 3,500 projects that improve water quality, protect and restore native habitats and species, prevent and control invasive species, and address other additional Great Lakes environmental problems.

The Great Lakes Restoration Initiative Action Plan II, released in September of 2014 (<http://greatlakesrestoration.us/actionplan/pdfs/glri-action-plan-2.pdf>), identifies the most significant ecosystem problems that exist in the Great Lakes Basin, and identifies ways to solve them. This report provides an overview of progress during FY 2016 for each Focus Area. It also includes select success stories, detailed information on funding, and performance information for Action Plan II Measures of Progress.

GLRI Action Plan II Focus Areas

Toxic Substances and Areas of Concern

In FY 2016, federal agencies and their partners finished all the management actions needed to delist the St. Clair River AOC in Michigan. During FY 2016, substantial progress was made towards the completion of management actions needed to delist four other AOCs, including St. Mary's River (MI), Lower Menominee River (MI), River Raisin (MI), and Rochester Embayment (NY). All management actions in these AOCs are expected to be completed in FY 2017.

Invasive Species

During FY 2016, federal agencies and their partners continued efforts to prevent the introduction of new invasive species and control existing invasive species populations throughout the Great Lakes ecosystem. Ongoing work in the Chicago, IL Area Waterway System and new efforts in Eagle Marsh, IN are stopping the upward migration of silverhead and bighead carps and preventing them from becoming established in the Great Lakes. Federal agencies and their community partners expanded control activities in FY 2016 by over 14,000 acres. Since the inception of the GLRI, federal agencies and their partners have taken actions to control invasive species on over 115,000 acres.

Nonpoint Source Pollution Impacts on Nearshore Health

The GLRI implemented focused conservation activities to reduce sources of phosphorus loadings that threaten the Great Lakes nearshore regions. During FY 2016, federal agencies and their partners worked collaboratively to reduce nonpoint sources of phosphorus runoff that contribute to harmful algal blooms around the Great Lakes in priority watersheds such as Lake Erie, Saginaw Bay, and Green Bay. Federal agencies project that over 402,000 pounds of phosphorus has been prevented from entering the Great Lakes cumulatively as a result of GLRI funded projects.

Habitat and Species

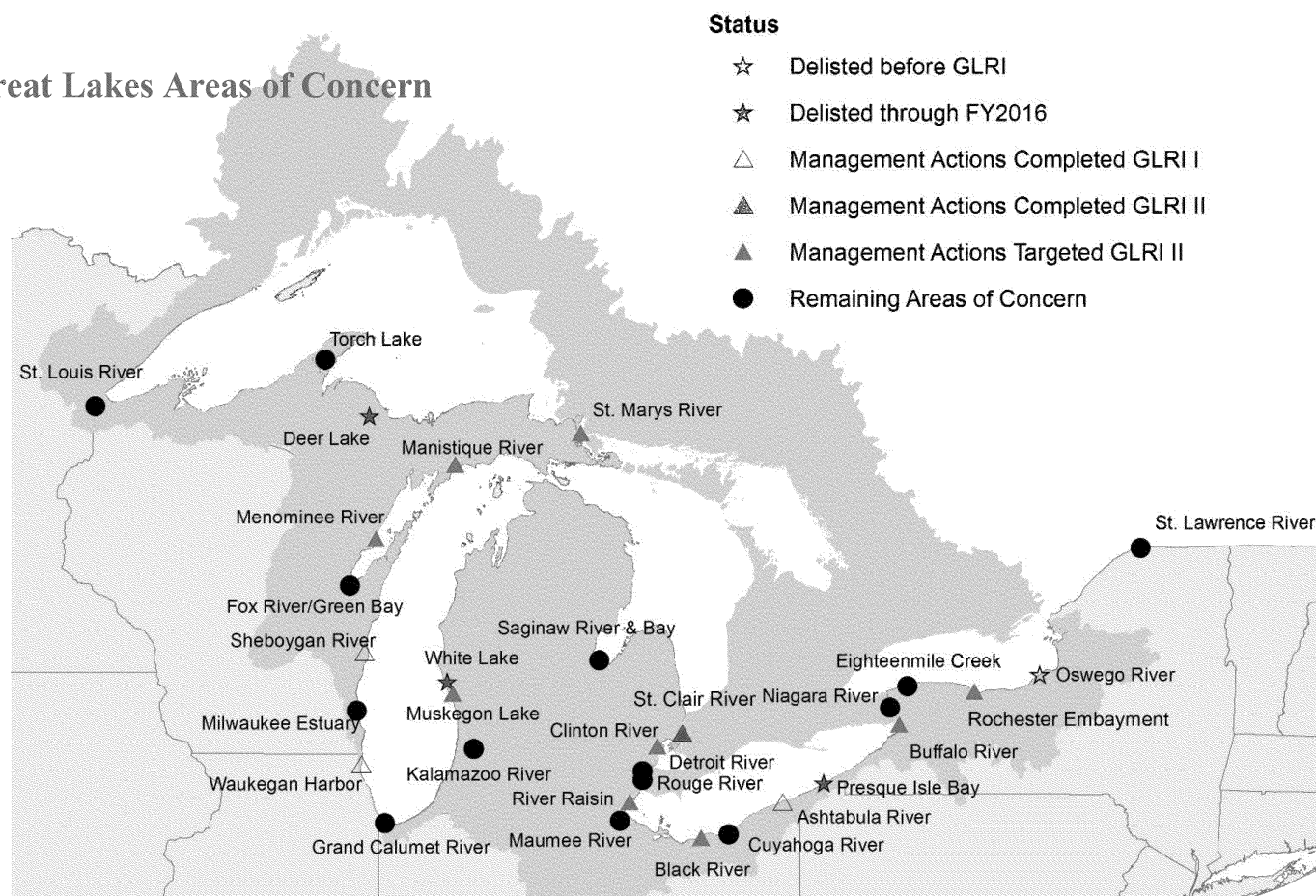
During FY 2016, federal agencies and their partners protected, restored and enhanced habitats and native species throughout the Great Lakes basin, implementing a total of 45 projects. These efforts add to the more than 920 habitat and species projects undertaken over the course of the GLRI. Federal agencies and their partners protected, restored and enhanced 642 miles of Great Lakes shoreline and riparian corridors and 17,500 acres of coastal wetlands through FY 2016. Since the start of the GLRI, more than 180,000 acres of habitat have been protected, restored, or enhanced.

Foundations for Future Restoration Actions

In order to improve transparency and fiscal stewardship, the GLRI has established accountability mechanisms, management practices, and third party oversight for effective management. During FY 2016 the GLRI educated people residing in the Great Lakes basin, reaching over 400 educators who then incorporated Great Lakes specific material into their broader environmental education curricula. More than 27,000 people are estimated to have been educated as a result of this curriculum in FY 2016.

Section 2 – Program Accomplishments

Great Lakes Areas of Concern



FOCUS AREA 1: Toxic Substances and Areas of Concern

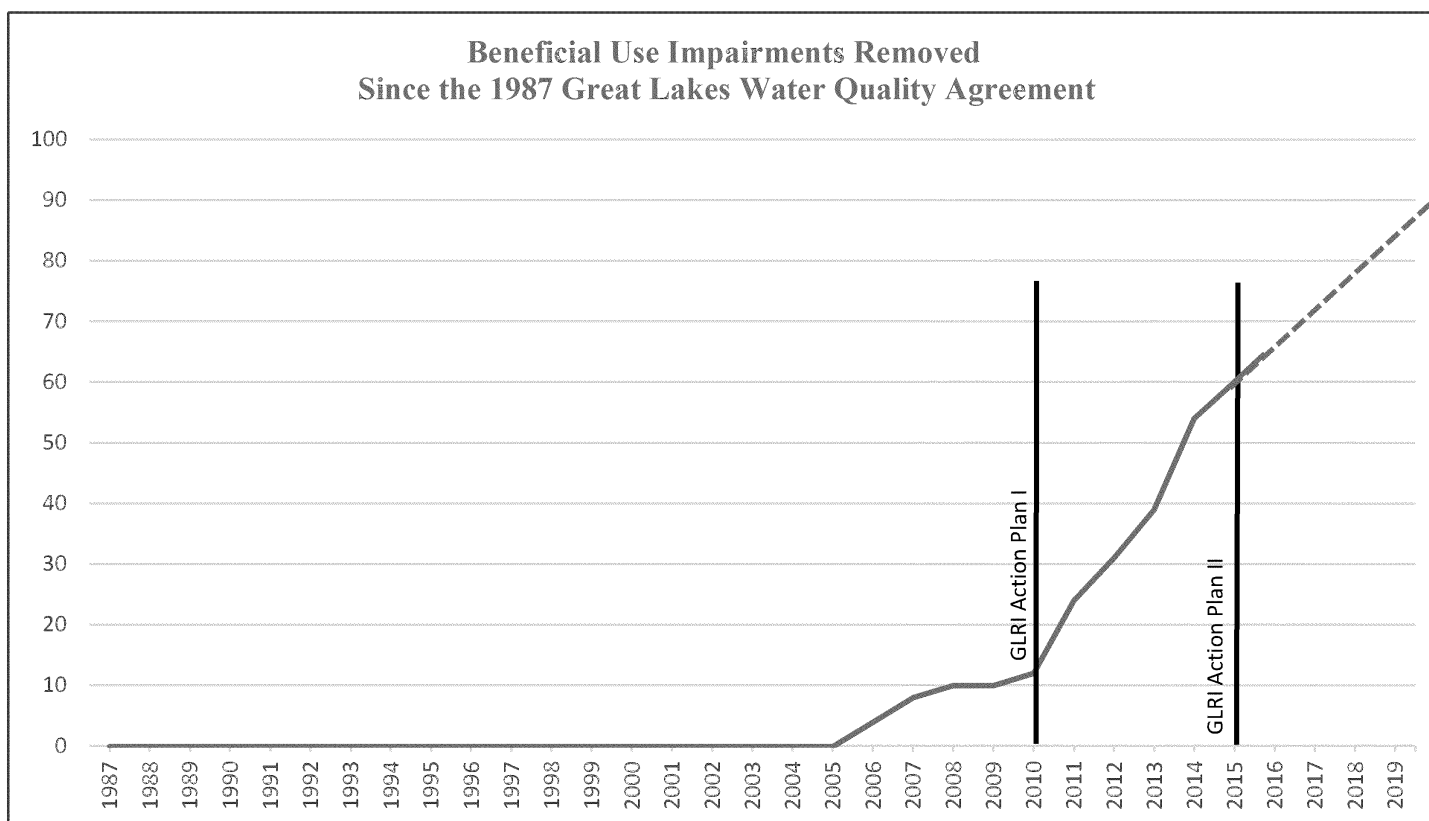
Defined in the 1987 Great Lakes Water Quality Agreement, Areas of Concern (AOC) are the areas of the Great Lakes basin that are most heavily contaminated with legacy pollutants and show signs of environmental degradation such as habitat loss and fish consumption advisories. Federal agencies and their partners have completed all management actions required to delist seven AOCs in the Great Lakes Basin.

In FY 2016, federal agencies and their partners finished the management actions needed to delist the St. Clair River AOC in Michigan. One of the habitat projects at St. Clair River, Marysville Living Shoreline, is shown here. During FY 2016, substantial progress was made toward completion of management actions needed to delist four other AOCs, including St. Mary's River, MI, Lower Menominee River, MI, River Raisin, MI, and Rochester Embayment, NY. All management actions in these AOCs will be completed in 2017.



In FY 2016, federal agencies and their partners removed five Beneficial Use Impairments (BUIs) at five AOCs in three states, bringing the cumulative total BUI removals since the start of the GLRI to 65, more than five times the total removed in the preceding 22 years. BUIs are the benchmarks of environmental harm and characterize the AOC. Once an AOC's BUIs are removed, the area becomes known as an area in recovery until monitoring shows it can be formally delisted.

During FY 2016, federal agencies and their partners implemented 7 projects to protect human health from contaminants in Great Lakes fish. Federal agencies and their partners updated fish consumption advisories and provided public information on the health risks as well as the benefits of Great Lakes fish consumption.



During FY 2016, federal agencies and their partners provided advice to over 200,000 people regarding the risks and benefits of Great Lakes fish consumption. Federal agencies and their partners focused on populations with the highest risk of contaminant exposure, including:

- ☐ Women of child bearing age
- ☐ Children
- ☐ Urban anglers
- ☐ Tribal communities
- ☐ Others who rely on Great Lakes fish as a significant part of their diet

Federal agencies and their partners continue to characterize and assess the risks posed from emerging contaminants on the health of Great Lakes fish and wildlife. Through this multi-agency effort, GLRI partners have gained a better understanding of how the presence and distribution of emerging contaminants (such as Perfluorinated compounds (PFCs) and Polybrominated diphenyl ethers (PBDEs)), can affect potential routes of exposure and have potential health impacts on fish and wildlife populations.

Focus Area 1 Success Stories

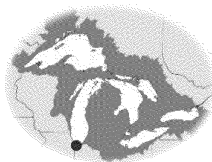


Great Lakes Indian Fish & Wildlife Commission Mercury Program

In FY 2016, the Great Lakes Indian Fish & Wildlife Commission (GLIFWC), with support from the GLRI, empowered tribal members in the Lake Superior region to make informed decisions regarding safe fish consumption. In 2010 the GLRI began funding the GLIFWC's Mercury Program. During that time, 2,500 fish have been collected from Lake Superior and nearby inland lakes and tested for mercury, with a focus on tribally important species and harvest locations. The data is used to generate and update the GLIFWC's Mercury Maps, which display color-coded, and lake-specific fish consumption advice for over 300 lakes. This data provides strategies for continuing to harvest and consume fish, a vital part of the tribal way of life, while minimizing mercury exposure.



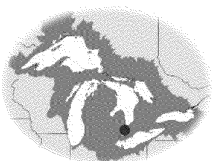
Grand Calumet River AOC Restoration



During FY 2016, the GLRI conducted sediment remediation and habitat restoration in the Grand Calumet River AOC, IN. EPA and its project partners have removed approximately 15,000 cubic yards of sediments contaminated with polycyclic aromatic hydrocarbons (PAHs), heavy metals, and other legacy pollutants from the river and have begun installing a multilayer active cap over this 1/2-mile stretch of the river. This project has contributed to the improvement of the shoreline by removing invasive plants, improving fish and wildlife habitats, providing better food and shelter for native species, and enhancing the landscape aesthetics. Restoration of nearly three miles of the West Branch of the Grand Calumet River to the Indiana/Illinois state line has been completed.



Contaminants of Emerging Concern in Sturgeon Blood

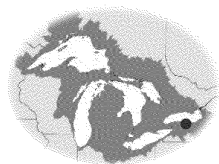


In FY 2016, a team of U.S. Fish and Wildlife Service (USFWS) biologists coordinated non-lethal sampling to measure Contaminants of Emerging Concern in sturgeon blood. This was done on a regional scale at sites in major rivers across the lower Great Lakes. Tens of thousands of Contaminants of Emerging Concern are found in commercial products that are consumed by the hundreds of tons each year. The field team drew on the collective experience and skills of USFWS staff and partners to help understand how such contaminants may be accumulating in lake sturgeon, and in turn, how these chemicals may be impacting their health. The Lake Sturgeon Project is just one example of how the USFWS is using GLRI funding to support cross-programmatic, inter-agency, and other collaborations to find efficiencies while achieving project goals.



Focus Area 1 Success Stories

Rochester Bay AOC Restoration

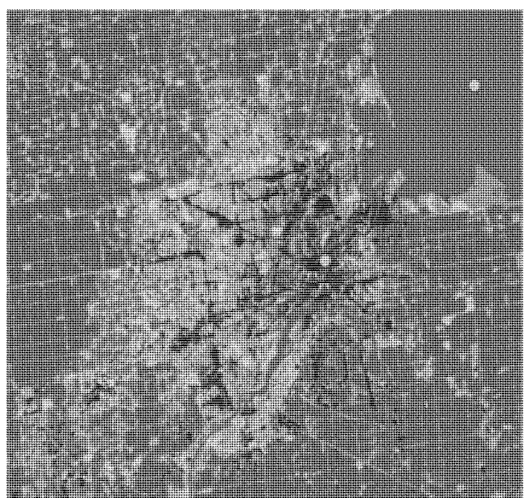


During FY 2016, GLRI partners began work to protect and restore Braddock Bay, a 340-acre coastal embayment on Lake Ontario consisting of expansive emergent wetlands and aquatic beds.

The work within the bay is designed to improve habitat diversity of the cattail-dominated wetlands and reduce erosion which in the past century has resulted in over 100 acres of wetland loss. In spring, channels and potholes were excavated in the existing wetland in order to increase the diversity of emergent wetlands and to improve connectivity to remnant sedge meadow habitat. A barrier beach is under construction in the bay mouth to protect the wetlands from further erosion and allow for the restoration of an additional three acres of wetlands historically lost to erosion. Together these activities protect and improve habitat for a wide range of flora and fauna including the northern pike and the New York state endangered black tern.



Maumee River AOC Sampling



During FY 2016, federal partners worked to define the presence and magnitude of chemical contaminants within Great Lakes tributaries and watersheds, in order to understand their impacts on fish and wildlife. This was accomplished through an intensive sampling

effort that took place within the Maumee River watershed, one of the most agriculturally influenced rivers in the entire Great Lakes basin, that includes corn, soybean, and wheat crops as well as some confined animal feeding operations. Sampling took place along a land use gradient ranging from agricultural to urban/industrial influenced, and was timed to coincide with summer pesticide runoff. Along with chemical analyses in various media and biota, a variety of biological organisms were collected for evaluation of biological effects. Partners are developing relationships between watershed attributes, such as land use and industrial point sources, and prioritizing watersheds by their likelihood of adverse biological impacts.

Menominee River AOC Restoration

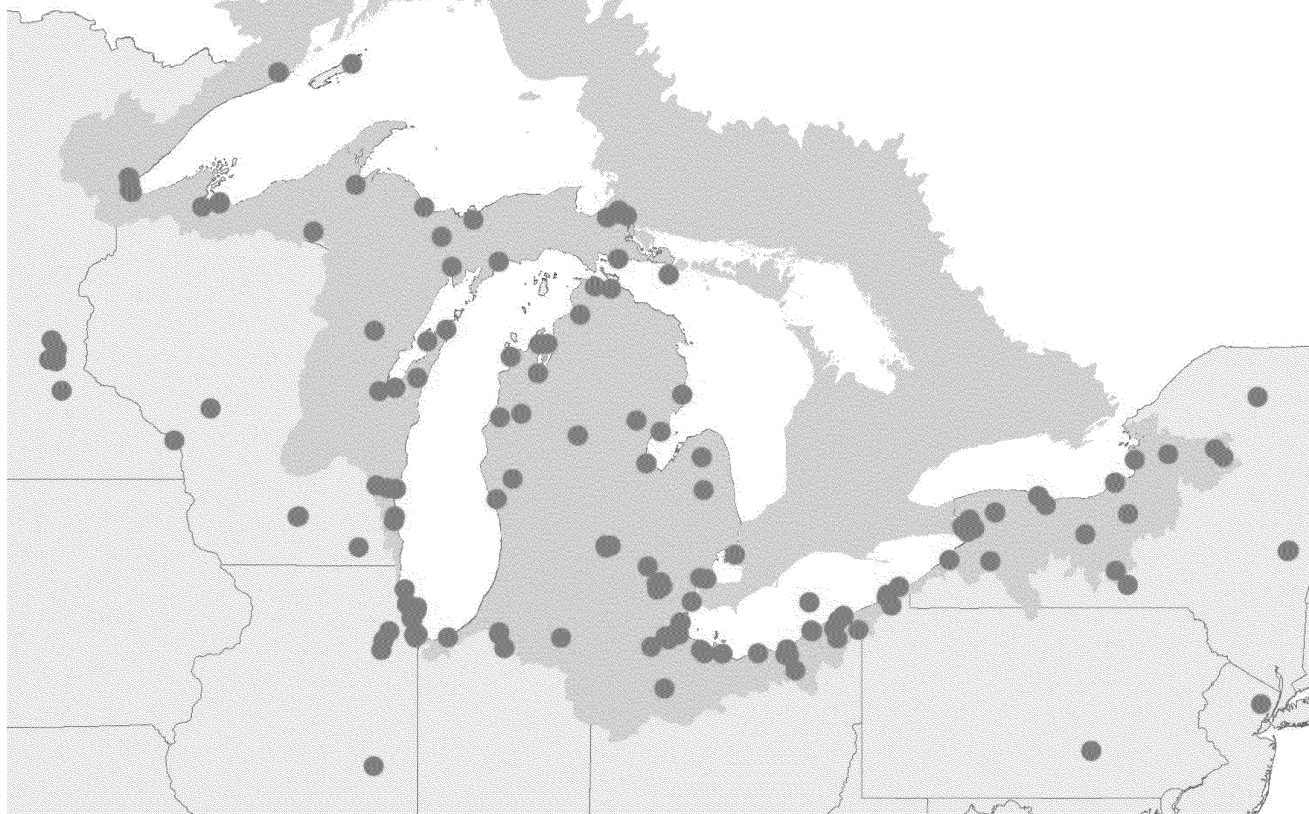


In FY 2016, with GLRI funding, the City of Marinette, WI along with the Wisconsin Department of Natural Resources (WDNR), has continued restoration efforts at Menominee Harbor,

WI. Habitat restoration began with invasive species plant control, native plantings, and the installation of fish and wildlife habitat structures. Project partners removed 27,000 cubic yards of contaminated sediments along with failing wooden seawalls, treated phragmites, and commenced monitoring. The city and WDNR share a vision for the harbor that includes: better public access, improved economic and recreational opportunities, healthier environment, and improved fish and wildlife habitat.



Great Lakes Restoration Initiative Invasive Species Control Projects (FY 2010-FY 2016)



FOCUS AREA 2: Invasive Species

During FY 2016, federal agencies and their partners continued efforts to prevent the introduction of new invasive species and control existing invasive species populations in the Great Lakes ecosystem.

Federal agencies and their partners conducted early detection monitoring exercises and trained for rapid responses. During FY 2016, the GLRI funded three early detection monitoring activities that enhance the ability to detect and respond to new invasive species introductions. Federal agencies and their partners also completed a total of 11 exercises and responses, exceeding their target of eight rapid responses and exercises in FY 2016.

Federal agencies and their partners have further reduced the risk of invasive species entering the Great Lakes watershed by funding 14 projects that help block the pathways of introduction. These pathways include: canals and water ways, recreational boating, commercial shipping, illegal trade of banned species, release of aquarium species, and release of live bait.



Protecting the Great Lakes from Asian Carp

The GLRI provides support to the Asian Carp Regional Coordinating Committee, which has implemented the Asian Carp Action Plan – including surveillance, response actions, and testing of new control technologies. More information about the ARCC is available at <http://www.asiancarp.us>.

During FY 2016, federal agencies and their partners restored sites degraded by aquatic, wetland, and terrestrial invasive species. Federal agencies also supported community efforts to control and reduce the spread of invasive species. These projects were implemented with partners who are expected to continue maintenance and stewardship beyond the duration of the federally funded projects lifespan. In addition, federal agencies directly implemented control projects in national forests, parks, and wildlife refuges. In FY 2016, federal agencies and their partners managed and funded projects that protected over 14,000 aquatic/terrestrial acres from invasive species for a cumulative total of more than 115,000 acres.

During FY 2016, federal agencies and their partners developed and refined invasive species control technologies and management techniques while effectively minimizing harm to other non-invasive fish species. The GLRI supports invasive species control technologies with proven potential but require additional testing. During FY 2016, in order to evaluate their effectiveness in controlling invasive species in the Great Lakes basin, federal agencies and their partners field tested three technologies and methods, including two new ballast water management systems.

In FY 2016, federal agencies and their partners continued to support and enhance a total of four species-specific “collaboratives” which help communicate the latest control technologies and management techniques. Collaboratives are ongoing for the following species: Asian carp, phragmites, invasive mussels, and monococious hydrilla. These collaboratives are actively involved in the protection and control efforts occurring under the other invasive species objectives.

Supporting Sustainable Invasive Species Control Through Community Projects

The GLRI is actively building the capability of Great Lakes communities to manage invasive species through funding on-the-ground and in-the-water control projects by supporting step 3 of this process.

Step 1

- Identify project site

Step 2

- Develop plans for short-term control and long-term stewardship

Step 3

- Provide funding for initial control activities and the assessment of project effectiveness. Project implementation also provides opportunities for communities to:
 - Create volunteer stewardship program
 - Provide job skills training
 - Provide employment opportunities, including the use of “civilian conservation corps” initiatives

Step 4

- Community stewardship maintains the significantly improved site



Protecting the Great Lakes from Sea Lamprey

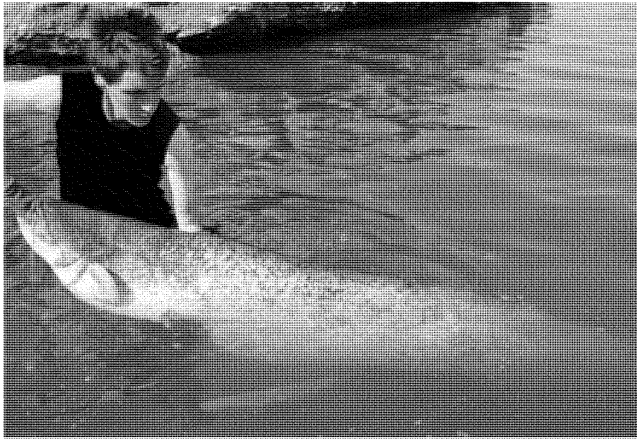
The GLRI provides support to the Great Lakes Fishery Commission’s Sea Lamprey Control Program. The GLFC has successfully implemented control techniques that returned Lake Huron and Lake Michigan Sea Lamprey populations to historic lows, and put Lake Ontario populations at target levels. Lake Superior and Lake Erie sea lamprey populations are both above target levels, but each continues to show a five-year downward trend in adult sea lamprey populations. The GLRI is supporting research that enhances Sea Lamprey control, including cutting-edge work on pheromones that attract and repel Sea Lamprey.

Focus Area 2 Success Stories

Closing Asian Carp Pathways



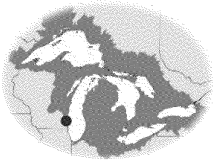
During FY 2016, the Asian Carp Regional Coordinating Committee, using GLRI funding, completed a barrier installation project at Eagle Marsh Nature Preserve in Fort Wayne, IN. This barrier helps to keep Asian carp from transferring between the watersheds of the Wabash River in Indiana and the Lake Erie watershed in Ohio, through the Maumee River. Working closely with the Army Corps of Engineers (USACE) and the Natural Resources Conservation Service (NRCS) a berm was designed that was built at the Eagle Marsh site to restrict Asian carp entry into the Great Lakes. The berm is 1.7 miles long and averages 7.5 feet high. Construction took three months and used 177,000 cubic yards of compacted fill. The project used Wetland Reserve Program funds from NRCS to construct the berm on the easement and GLRI funds for work outside of the site.



Preventing Potential New Invasive Species

During FY 2016, the USFWS developed the 11 Species Rule, listing the crucian carp, Prussian carp, Eurasian minnow, roach, stone moroko, Nile perch, Amur sleeper, European perch, zander, Wels catfish and the common yabby, as “injurious wildlife”. The multi-species injurious listing sets a new precedent for preventative action to stop animal invaders before they enter the country. These 11 species are native to one or more of the continents of Europe, Asia, Africa, and Australia and have the potential to become invasive and highly detrimental to U.S. native wildlife and habitats. The USFWS selected animals for the multi-species injurious listing using a process called Ecological Risk Screening Summaries. Since 2010, to examine potential invaders, the GLRI has supported more than 1,400 risk assessments.

Cooperative Weed Management at Milwaukee County Zoo



In FY 2016, the U.S. Forest Service (USFS) partnered with the Southeastern Wisconsin Invasive Species Consortium (SEWISC) to control invasive plants at the Milwaukee County Zoo with support from GLRI funding.

The Forest Service, with the help of the Student Conservation Association and the Milwaukee County House of Corrections, exposed and treated the bare ground layer after removing a dense thicket of glossy buckthorn and garlic mustard at the two-acre site adjacent to Lake Evinrude. In May, the Zoo hosted “Party for the Planet”, a weekend of activities focusing on conservation, where trees were planted at the site and Zoo visitors learned about the importance of preserving native vegetation and protecting vital habitat.

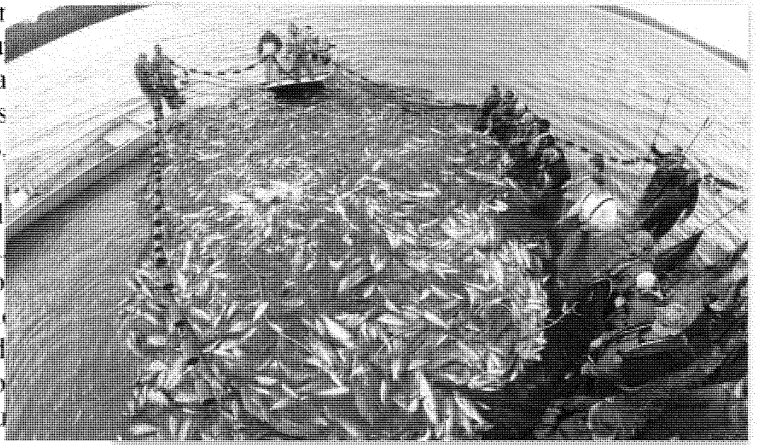


Focus Area 2 Success Stories

Unified Fishing Method



During FY 2016, the GLRI, to further reduce Asian carp abundance in the upper Illinois River, planned and executed a project that deployed the “Unified Fishing Method” in a 500-acre lake in Morris, Illinois. In March of 2016, Illinois Department of Natural Resources (IDNR) worked with contracted fishers to implement the pilot project. The contracted fishers, along with IDNR, deployed nets that were lifted and reset, funneling and blocking the fish to continually concentrate the fish into the east end of the lake over a two-week time period. The fisherman used boat movement, electrofishing boats, motors, and additional sonar. In all, the project captured or removed nearly 100,000 pounds of bighead and silver carp.



Mobile Boat Washing in Michigan

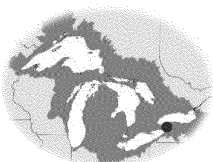


During FY 2016, using GLRI funding, USFS along with the help of passionate volunteers, thwarted aquatic invasive species from hitching a ride between lakes in Michigan. Aquatic Invasive Species have a tendency to attach

themselves to the outside of boats. Using a mobile boat washing unit, project staff coordinate educational boat washings at boating access sites and boater related events throughout the summer. Results from the 2016 season outpaced those of the first two years thanks to acquisition of a second mobile boat washing unit and a second team. The messages shared through boat cleaning events have a lasting impact on people, and the ecosystem. Every boater, angler and recreational user has the potential to spread the vital message of “Clean, Drain & Dry” to thwart the spread of invasive species.



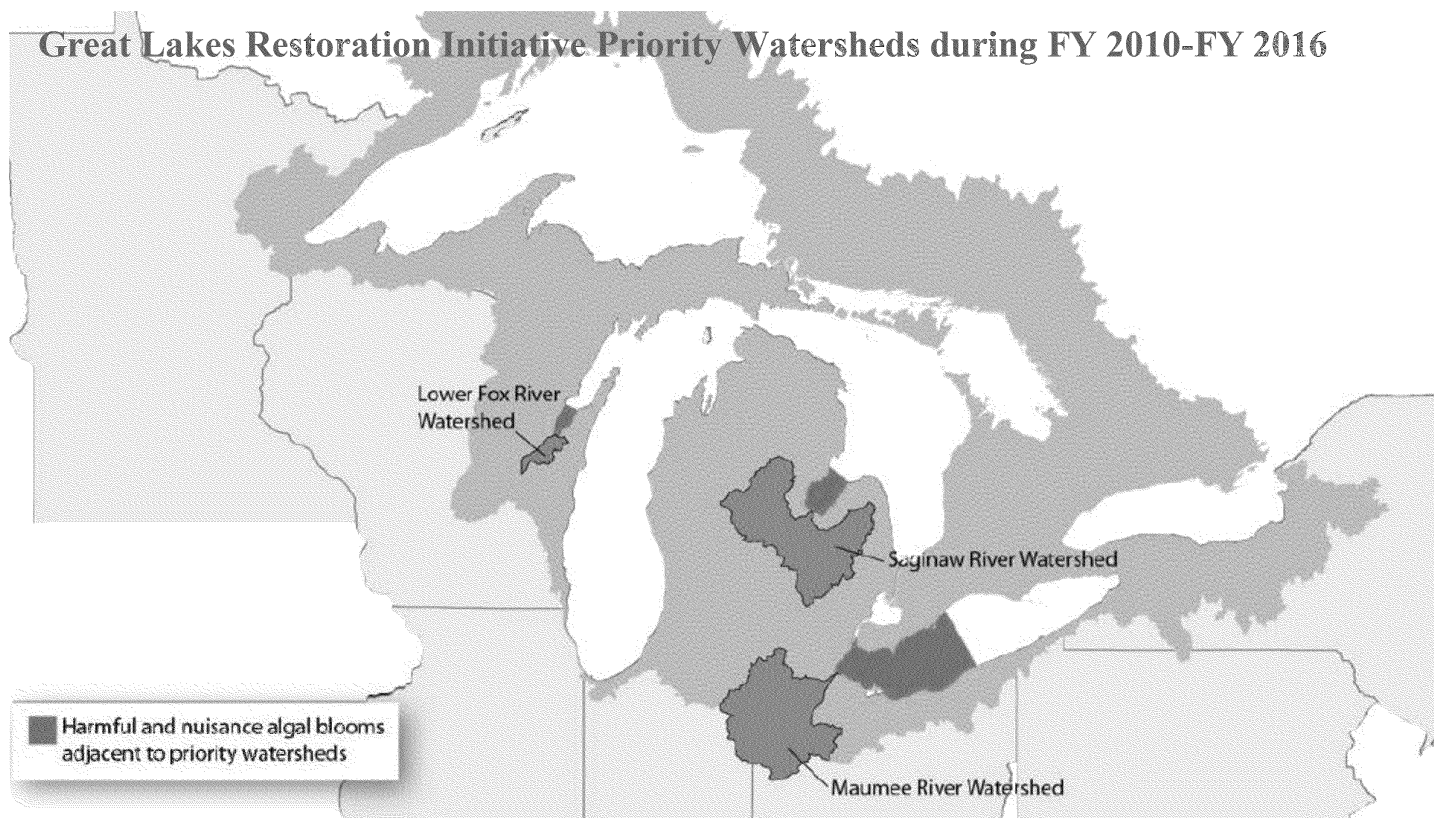
Five Year Invasive Cleanup Complete at Times Beach



In FY 2016, USACE, using GLRI funding, completed a five-year invasive species removal program that has transformed Times Beach, in Buffalo, NY. Times Beach was once a turn of the century era recreational beach on the outer harbor of the Buffalo River. It was re-designated as a contained disposal facility for river and harbor dredged material in the 1930's due to industrial contamination. Over time, Times Beach transformed into one of the most valuable bird and pollinator conservation sites in the Great Lakes. As a result, it was decommissioned in 2005 and transformed into a nature preserve. However, like so many Great Lakes systems it was plagued with invasive plant species including phragmites. Thanks to the GLRI, Times Beach is a healthy nature preserve supporting native vegetation and providing critical habitat for a wide range of bird species.



Great Lakes Restoration Initiative Priority Watersheds during FY 2010-FY 2016

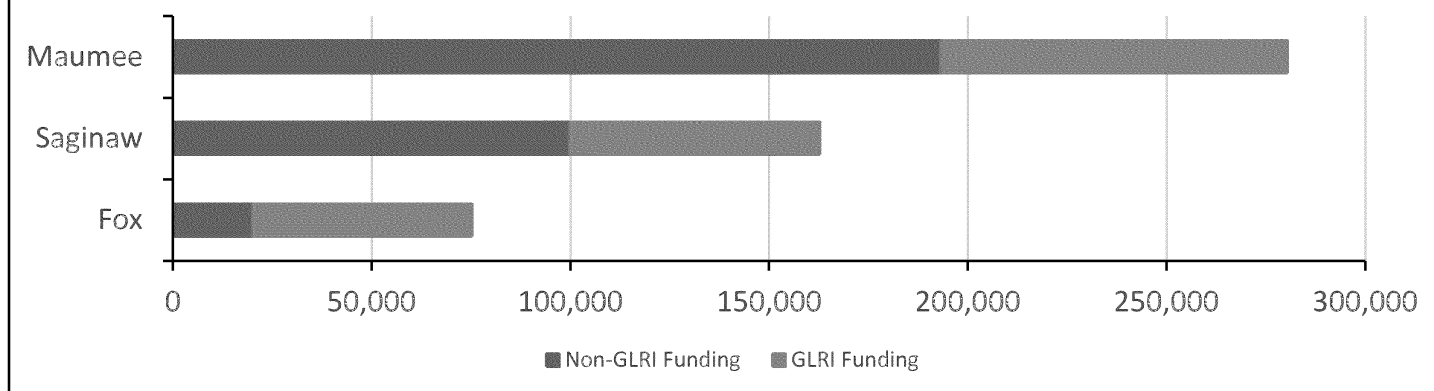


FOCUS AREA 3: Nonpoint Source Pollution Impacts on Nearshore Health

During FY 2016, federal agencies and their partners reduced nutrient loads into the Great Lakes. The GLRI implemented focused conservation activities to reduce sources of phosphorus loadings that threaten the Great Lakes nearshore regions and projects have been undertaken in selected agricultural priority watersheds. The largest nonpoint source of phosphorus loadings that threaten the Great Lakes nearshore areas is the nutrient runoff from agricultural lands.

Excess phosphorus loadings threaten the Great Lakes ecosystem by contributing to harmful algal blooms that cause human health effects, drinking water impairments, exacerbate dead zones, and cause beach closures that result in loss of recreational opportunities. The GLRI agencies project that over 402,000 pounds of phosphorus was prevented from entering the Great Lakes as a result of GLRI funded projects in FY 2016.

GLRI Funding Increased Acreage Enrolled in Agricultural Conservation Programs in Priority Watersheds through FY2016



During FY 2016, federal agencies and their partners funded nutrient and sediment reduction projects on over 89,000 acres of targeted watershed in the Great Lakes Basin using GLRI funding.

During FY 2016, federal agencies and their partners reported projections on urban runoff projects that are anticipated to capture an average annual volume of more than 79 million gallons of untreated urban runoff per year. These projects reduce flooding, increase green space in urban areas, and return vacant properties to productive use during FY 2016. Federal agencies and their partners funded 36 urban watershed management projects in FY 2016 to implement best management practices that address nonpoint source pollution in urban areas. The practices implemented include:

- | | | |
|---------------------------------------|---|---|
| <input type="checkbox"/> Bioswales | <input type="checkbox"/> Bioretention ponds | <input type="checkbox"/> Tree plantings |
| <input type="checkbox"/> Rain gardens | <input type="checkbox"/> Porous pavement | <input type="checkbox"/> Constructed wetlands |

In FY 2016, the GLRI also funded green infrastructure projects in the following 13 Great Lakes shoreline cities:

- | | | | | |
|---|---|-------------------------------------|---|---|
| <input type="checkbox"/> East Chicago, IN | <input type="checkbox"/> Huron, OH | <input type="checkbox"/> Duluth, MN | <input type="checkbox"/> Ashland, WI | <input type="checkbox"/> Two Rivers, WI |
| <input type="checkbox"/> Ashtabula, OH | <input type="checkbox"/> Sandusky, OH | <input type="checkbox"/> Evans, NY | <input type="checkbox"/> Manitowoc, WI | |
| <input type="checkbox"/> Cleveland, OH | <input type="checkbox"/> Vermillion, OH | <input type="checkbox"/> Algoma, WI | <input type="checkbox"/> Wind Point, WI | |

Projects in these shoreline cities will treat, slow, or capture untreated stormwater runoff, helping to improve water quality conditions within the Great Lakes basin.



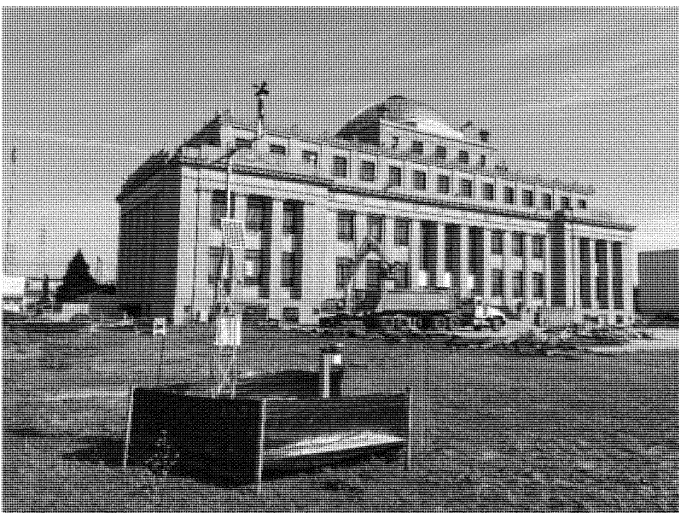
Focus Area 3 Success Stories

Near Shore Water Quality in the Windy City

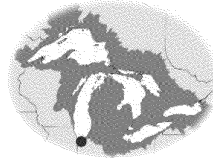


Large ring-billed gull populations contribute to poor water quality in the nearshore waters/swim beaches of Lake Michigan in the Chicago, IL region.

Results of tests for *Escherichia coli* (*E. coli*) in Chicago lakefront beach water have led to the frequent issuance of swim advisories. Through an adaptive water quality improvement program, the Chicago Park District, the USDA's Wildlife Services program, and the EPA collaborated to improve these conditions in FY 2016. Components of this program included reducing the population of ring-billed gull chicks in Chicago, efforts to educate beach-users on their role in fostering clean beach water quality, improving waste disposal on beaches, and numerous other water quality improvement strategies.



Green Infrastructure in Gary, IN



During FY 2016, the GLRI funded green infrastructure at City Hall in Gary, Indiana. Stormwater reduction strategies and green infrastructure were installed at a plaza just south of City Hall. The

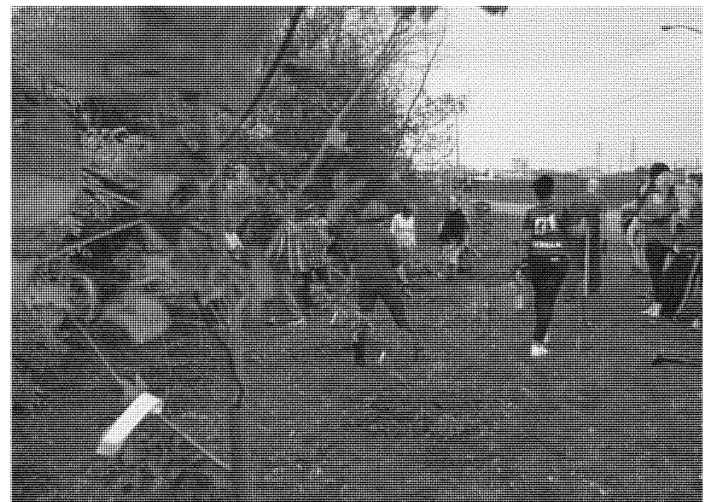
construction of the plaza included removal of impervious cover, repair of a failed subsurface drainage system, and redirection of stormwater from parking lot drains to a rain garden to enhance infiltration of stormwater. Monitoring started in spring of 2016 and will continue through 2017. Final products from these efforts will include hydrologic comparisons of stormwater reduction in different settings. Information gathered by these projects will be used to design future stormwater control measures in urban projects around the Great Lakes and in other parts of the nation.

Mill Creek Riparian Reforestation at Highland Hills, OH

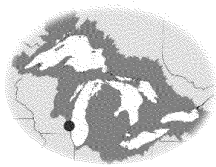


In FY 2016, the USFS collaborated with the West Creek Conservancy, the Ohio DNR, and volunteers to plant 6,000 native trees and live stakes over eleven acres in order to improve stormwater

flow on Mill Creek located in Highland Hills, Ohio. Each one of these trees and shrubs will filter out pollutants before they can enter into the waterways and help reduce erosion along the shoreline. As part of this 2,900-foot stream restoration project, the USFS will conduct ten additional planting events over the next two years.



Focus Area 3 Success Stories

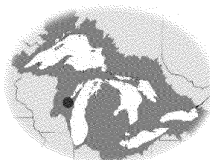


Green Infrastructure at Former Brownfield Site

In FY 2016, using GLRI funding, the City of Oak Creek, WI began revitalizing a 250-acre former industrial area located on a bluff overlooking the shore of Lake Michigan. As part of a brownfield clean up, approximately 114 acres of this formerly contaminated land is being converted to a coastal greenfield. This green infrastructure project focuses on installing pervious pavers to capture untreated stormwater runoff from the parking area and constructing over 2.5 acres of wetlands. These green infrastructure installations will remove sediment and other nutrients from the stormwater runoff, cleaning it before it enters Lake Michigan. As a result of this work, the residents in the Oak Creek community will have public access to the Lake Michigan shore for the first time in 80 years.

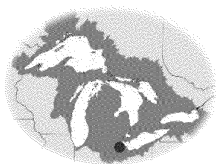


Modern Water Quality Trade Agreement in WI

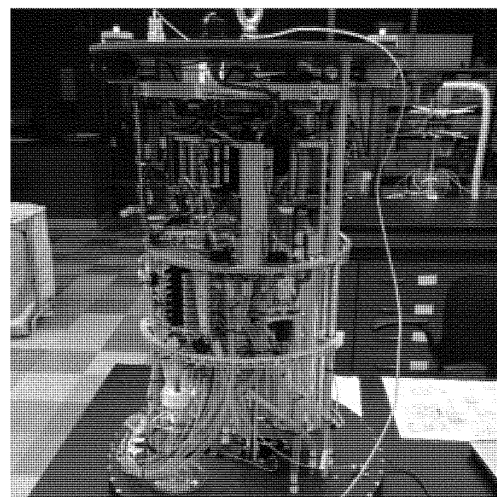


In FY 2016, NRCS, and the Great Lakes Commission (GLC) announced the signing of the first modern water quality trade agreement between a crop farmer and a waste-water treatment facility on the U.S. side of the Great Lakes basin. The trade agreement, signed in the Fox River basin, near Green Bay, WI, was brokered by the GLC and is the culmination of a multi-year project known as Fox P Trade. During that time, the GLC worked with key stakeholders across the Lower Fox River watershed to test water quality trading as a potential tool to help reduce nutrient loadings into the Lower Fox River, which drains into Green Bay. The Brown and Outagamie county land conservation departments partnered to connect the project with local farmers.

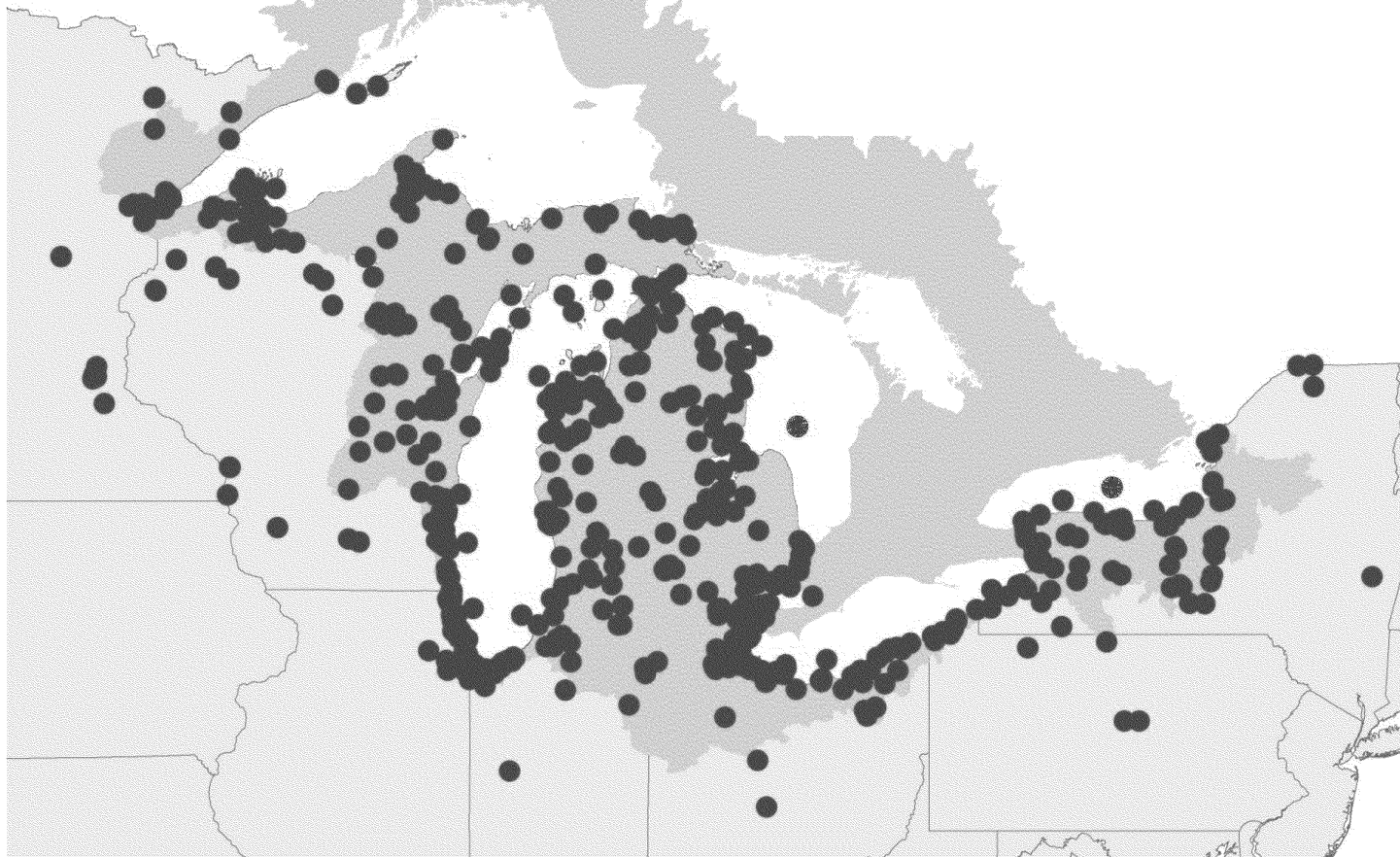
NOAA GLERL Analyzes Lake Erie HAB Toxins



In FY 2016, National Oceanic Atmospheric Administration's (NOAA) Great Lakes Environmental Research Laboratory (GLERL) deployed the first Environmental Sample Processor (ESP) in a freshwater system thanks to GLRI funding. An ESP is an autonomous robotic instrument that works as a 'lab in a can' in aquatic environments to collect water samples and analyze them for algal toxins. This allows for near real-time detection of Harmful Algal Blooms (HAB) and their toxins. The GLERL deployed the ESP in September 2016 near the Toledo Water intake to detect concentrations of toxins as a drinking water early warning system. This provides drinking water managers with data on harmful-algal toxicity in near real-time before the water reaches municipal water intakes. The ESP is part of a suite of 17 ESPs used globally.



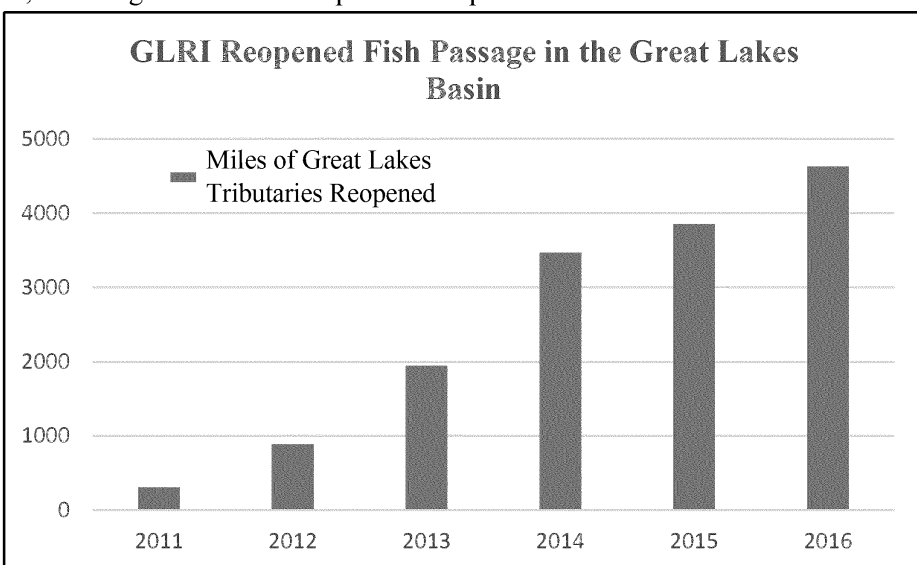
Great Lakes Restoration Initiative Habitat Restoration and Species Protection Projects (FY 2010-FY 2016)



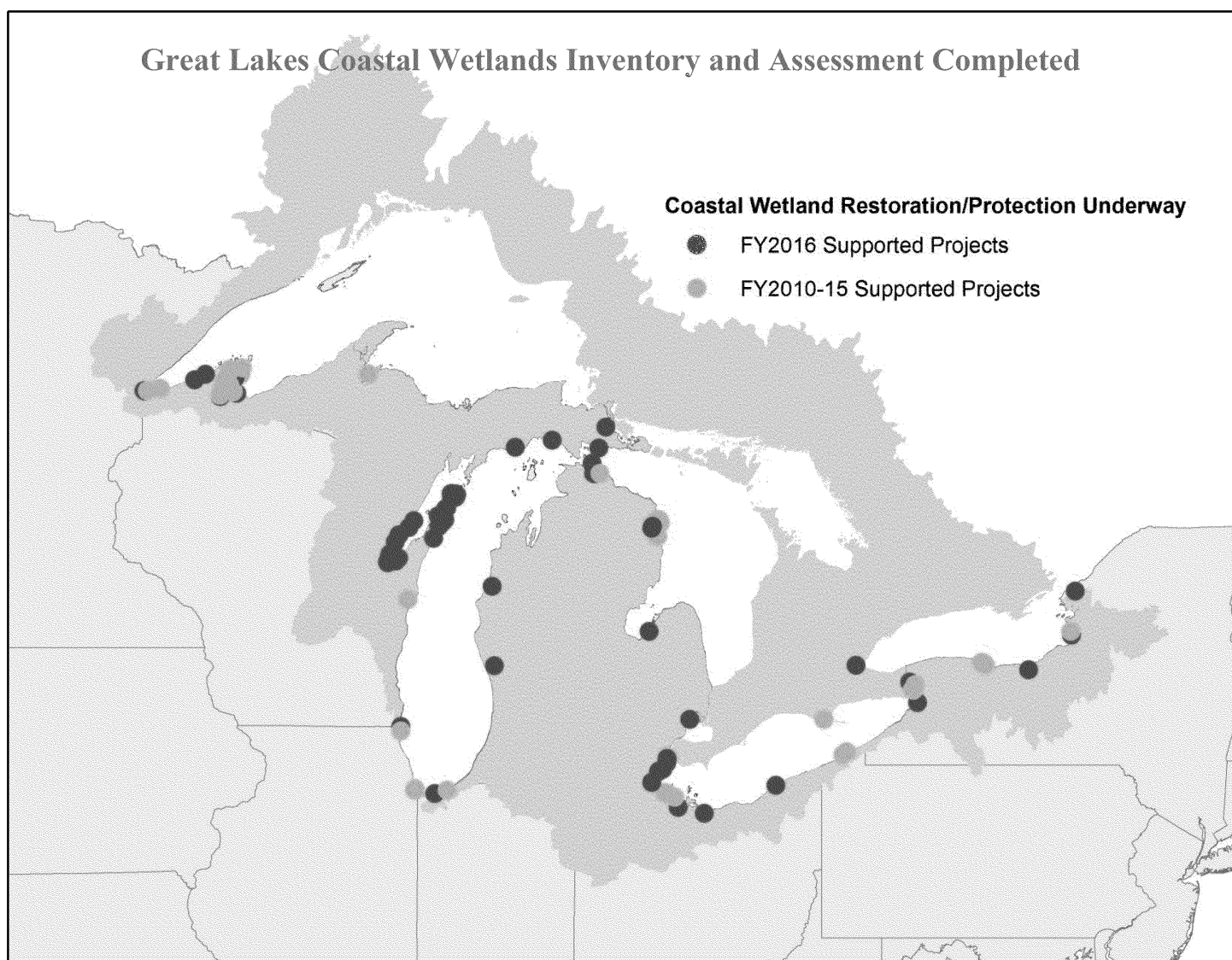
FOCUS AREA 4: Habitat and Species

During FY 2016, federal agencies and their partners protected, restored and enhanced habitats and native species throughout the Great Lakes basin. In FY 2016, GLRI agencies and their partners implemented 45 habitat and native species projects adding to the more than 920 habitat and native species projects underway or completed by federal agencies and their partners since the inception of the GLRI.

Through FY 2016, federal agencies and their partners, implemented protection, restoration, and enhancement projects that have reopened over 4,600 miles of Great Lakes tributaries, and increased aquatic connectivity for numerous fish species. In FY 2016, GLRI partners protected, restored, and enhanced more than 20,000 acres of non-coastal wetland habitats in order to sustain Great Lakes habitats and species populations.



The Great Lakes Restoration Initiative Action Plan II identified a measure to protect, restore and enhance coastal wetlands. The Great Lakes coastal wetlands are ecologically significant in part because more than 80 species of fish rely directly on coastal wetland habitats during some part of their life cycles and over 50 separate species depend entirely on coastal wetland habitats. Through FY 2016, federal agencies and their partners have protected, restored and enhanced over 660 miles of Great Lakes shoreline and riparian corridors and protected, restored and enhanced over 17,500 acres of Great Lakes coastal wetlands.



As a result of GLRI efforts, Great Lakes aquatic and terrestrial habitats are better integrated and the species that depend on coastal habitats can now use them to their full capacity. Projects focusing on the Great Lakes aquatic and terrestrial species are leading to the recovery of federally endangered species such as

- | | | |
|---|--|---|
| <input type="checkbox"/> Eastern prairie fringed orchid | <input type="checkbox"/> Chittanooga ovate amber snail | <input type="checkbox"/> Mitchell's satyr butterfly |
| <input type="checkbox"/> Houghton's goldenrod | <input type="checkbox"/> Snuffbox mussel | <input type="checkbox"/> Piping plover |

In FY 2016 projects implemented in the Great Lakes Basin were directed towards protecting, restoring and enhancing piping plover populations. Great Lakes Piping Plover numbers are at the highest point they have been in decades. This season there were approximately 150 breeding plovers, an additional 50 non-breeders and we will fledge somewhere in the vicinity of 130 chicks. Currently, there are 75 documented pairs of piping plover in the Great Lakes basin.

Focus Area 4 Success Stories

Wetland Restoration at Maankiki Marsh



In FY 2016, using GLRI funding and working with Ducks Unlimited, the USFWS restored 1,000 acres of wetlands that are part of Shiawassee National Wildlife Refuge in Michigan. An essential piece of Michigan's largest freshwater estuary, the project returned the highly-altered agricultural landscape to its natural state and reconnected rivers long separated. To honor the first inhabitants of the area, refuge staff reached out to the Saginaw Chippewa Indian Tribe of Michigan to help craft the project site's name. In the traditional language of the Chippewa, also known as Ojibwa or Ojibwe, *mannkiki* is Anishinaabemowin for marsh or marshland of any size. Now known as Maankiki Marsh, the newly restored land will provide food and shelter for migrating ducks, geese and shorebirds, improve the fishery at Saginaw Bay, and enhance water filtration and better flood protection to local residents.

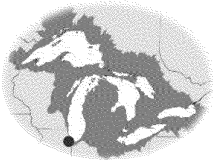


Recovering the State Endangered American Marten

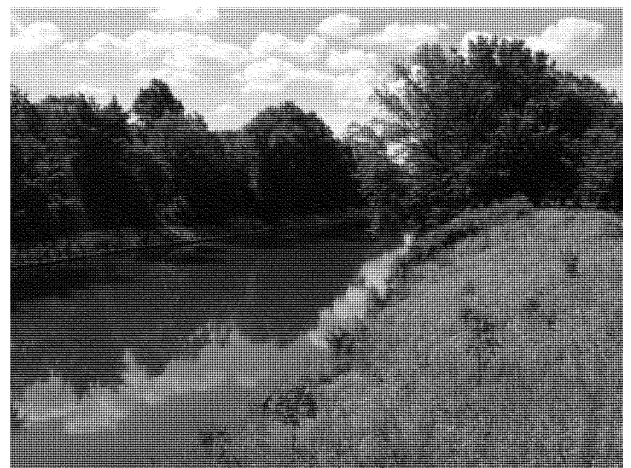


In FY 2016, GLRI funding made it possible to expand a camera survey in the Apostle Islands National Lakeshore to 18 islands, providing important information on distribution and relative abundance of the American marten. The American marten is state endangered in Wisconsin. It was thought to have been extirpated from the state in the 1920's – until its recent discovery within Apostle Islands National Lakeshore and the Red Cliff Reservation, WI. Remote cameras and DNA analysis verified the occurrence of the marten in the islands during a carnivore research project. Preliminary DNA evidence suggests that the marten have been on the islands for a long time. Interagency and tribal resource managers will use the results of this project to assist in statewide protection and recovery of the marten.

Horner Park Restoration

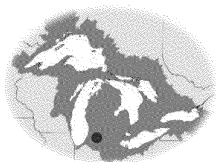


In FY 2016, GLRI funds restored a 10-acre parcel of underutilized park and river bank called Horner Park in Chicago, IL. Six hundred thousand citizens within three miles of the site now have access to a restored habitat and shoreline. Restoration included regrading the steep banks to a gradual slope reducing erosion, recreating a seasonal wetland for amphibians, restoring 2,600 feet of the Chicago River streambank, and restoring an Oak Savanna. Invasive species were removed and native species were increased by installing over 100 species of native grasses, forbs, wildflowers, and trees with over 35,000 plants. This restoration provides critical habitat for over 300 species of birds including over five million migrating song birds that travel along the globally significant Lake Michigan shoreline.



Focus Area 4 Success Stories

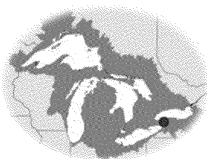
Wild Rice Returns to the Pine Creek Indian Reservation



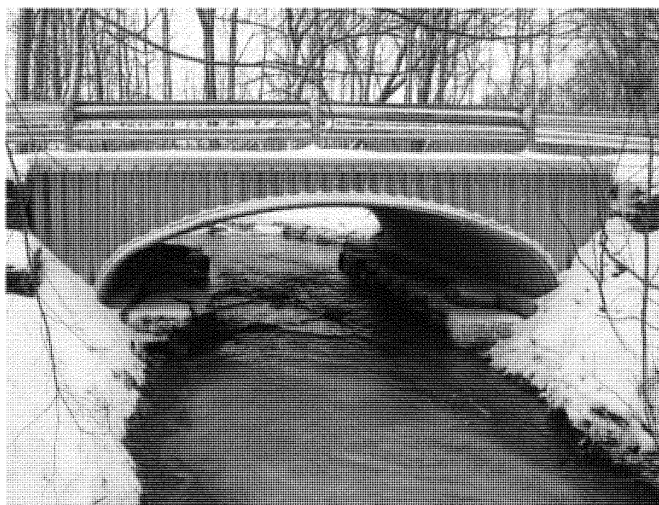
In FY 2016, using GLRI funding, the Nottawaseppi Huron Band of the Potawatomi Environmental Program transplanted over 1,100 wild rice root masses to the Pine Creek Indian Reservation. Utilizing traditional ecological knowledge, a half-acre of wild rice was restored in Rice Pond and two miles were restored on Pine Creek. Tribal members assisted restoration efforts working from stream shallows and canoes to harvest seed and transplant wild rice shoots. This marked a significant phase for the project as it moved beyond an investigative and monitoring phase to return wild rice, a culturally important food the Tribe had depended on for centuries, back to the Reservation. In addition, over 50 miles of potential habitat for future wild rice donor and receiving beds were assessed in the Kalamazoo River and St. Joseph River watersheds of the Lake Michigan basin.



Improved Fish Passage in Spring Brook, Finger Lakes, NY



During FY 2016, using GLRI funding, the USFS replaced a stream culvert with an aluminum arch structure that will allow all species and sizes of aquatic organism to move freely upstream of Spring Brook in Hector, NY. Of particular interest are the wild trout that populate the lower reaches of Spring Brook, which is the only state-designated trout stream in the Finger Lakes National Forest. Spring Brook and the nearby Finger Lakes communities are a vital part of this ecosystem. As a result, aquatic organisms have no more difficulty moving through the stream crossing structure than the nearby section of stream. The increased size of the crossing structure, equal to the width of the natural stream, will also make it more flood resilient by effectively passing larger flood flows as well as sediment and debris moving down the stream.

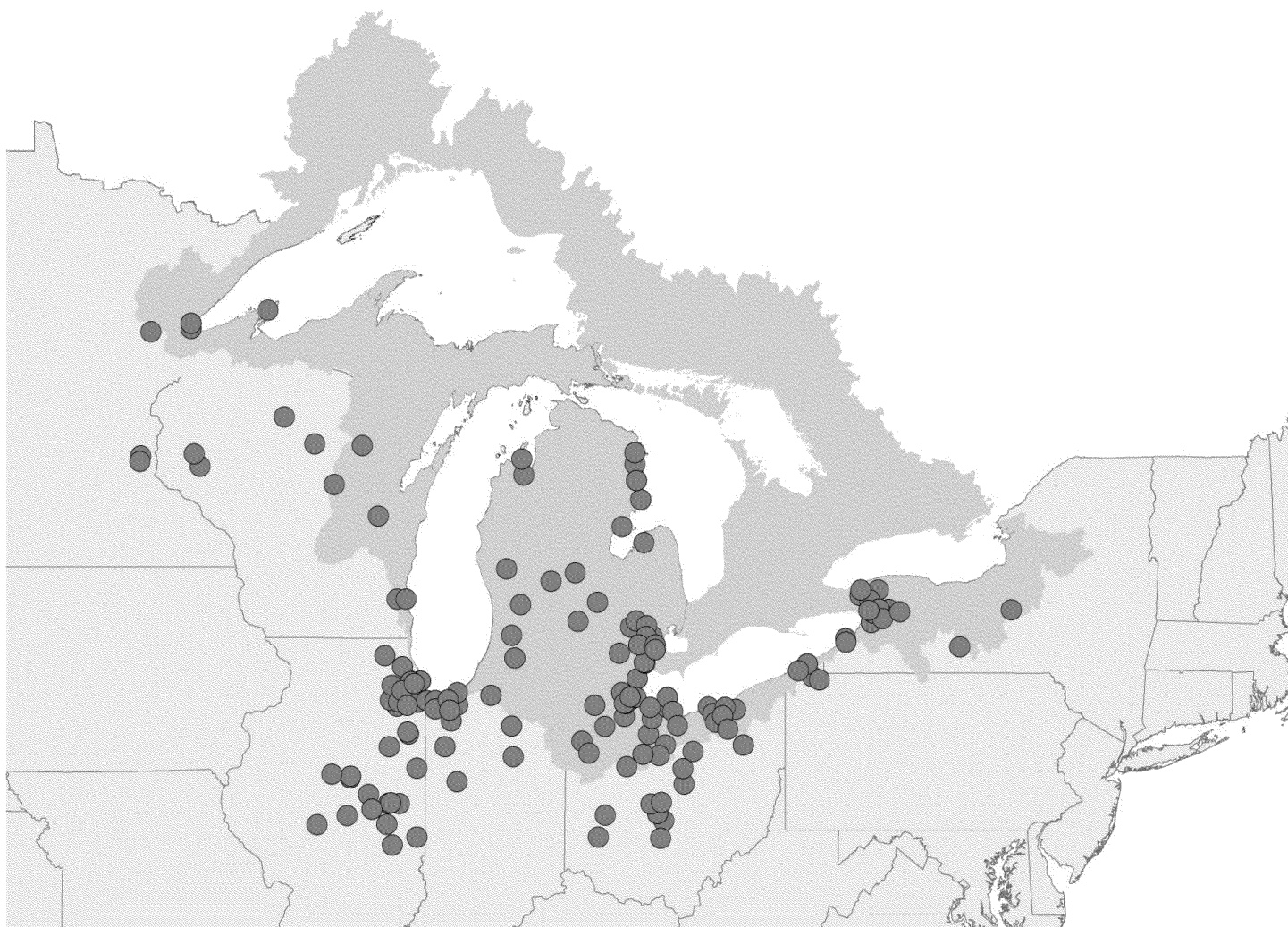


Restoring Native Fish Populations

As of FY 2016, the GLRI has funded 21 native fish passage projects for: walleye, lake trout, Atlantic salmon, bloater, lake whitefish, and cisco. Six of these projects are now complete. In addition, research results in 15 peer-reviewed publications and 21 presentations have been distributed to scientists, managers, and to the public. Evidence of sound production by lake trout associated with spawning, represents the first evidence of sound production by a salmonid. These results inform our understanding of lake trout reproduction, which remains an impediment to re-establishment. Information generated through the native fish restoration grant program is transferred to fishery managers via the Commission's Science Transfer Program where it can be put to work restoring native fishes throughout the basin.



Great Lakes Restoration Initiative Trained Educators across the Great Lakes FY 2016



FOCUS AREA 5: Foundations for Future Restoration Actions

In order to improve transparency and fiscal stewardship, federal agencies have established accountability mechanisms, management practices, and third party oversight to effectively manage the GLRI.

The GLRI Action Plan II commits agencies to develop and incorporate climate resiliency criteria in project selection, planning, and implementation. During FY 2016, federal agencies and their partners finalized a standardized set of climate resiliency criteria. The criteria will help GLRI funded projects be more resilient to the effects of projected climate change including the likelihood of future climate impacts including the increased frequency of more intense storms and shifts in ranges of particular species. Starting in FY 2017, GLRI projects will include climate resiliency criteria in planning and implementation.

The GLRI continues to promote Great Lakes-based ecosystem education and stewardship. During FY 2016, federal agencies and their partners trained 407 educators through the Center for Great Lakes Literacy (CGLL) a Great Lakes Sea Grant led program, and National Park Service interpretive programs. These programs provide hands-on experiences, educational resources, and networking opportunities to promote Great Lakes literacy among an engaged community of educators, scientists, and citizens. It is estimated that over 43,000 students will benefit each year from the training of these educators through the end of the Great Lakes Restoration Initiative Action Plan II in FY 2019.

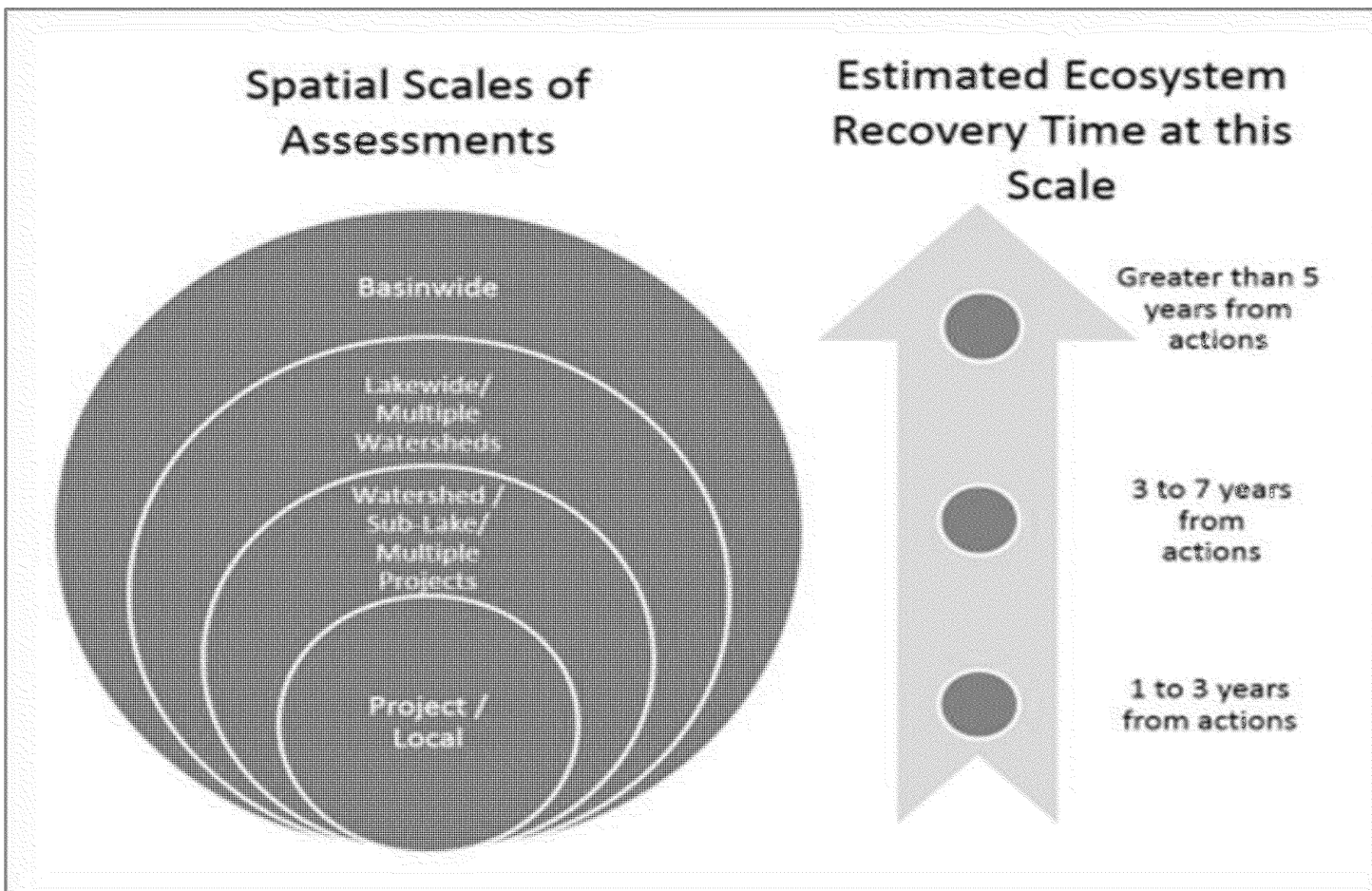
During FY 2016, federal agencies and their partner's educated over 27,000 people about the Great Lakes ecosystem through place based experiential learning activities on federally managed lands primarily through interpretative programs at national parks and lakeshores.

During FY 2016, federal agencies and their partners conducted comprehensive monitoring to assess the status and trends of environmental indicators in of the Great Lakes ecosystem. The monitoring data is used to prioritize future GLRI-funding decisions by identifying the most significant ongoing and emerging problems in the ecosystem.

During FY 2016, federal agencies and their partners continued to evaluate the effectiveness of GLRI-funded projects. The GLRI agencies utilized the accountability system, Environmental Accomplishments in the Great Lakes (EAGL), to track the effectiveness of GLRI-funded projects in meeting the Measures of Progress defined in the GLRI Action Plan II. The EPA also completed an EAGL Implementation Manual to improve data management and quality assurance throughout the EAGL system. The GLRI agencies also continued assessment efforts designed to evaluate the effectiveness of GLRI-funded projects.

The GLRI agencies and partners identified watersheds, habitats, and species to be targeted for potential additional restoration activities using monitoring data, assessments, models, and other decision support tools. The Great Lakes Advisory Board, states, tribes, and other stakeholders also provided input to the GLRI agencies on how to best use GLRI resources.

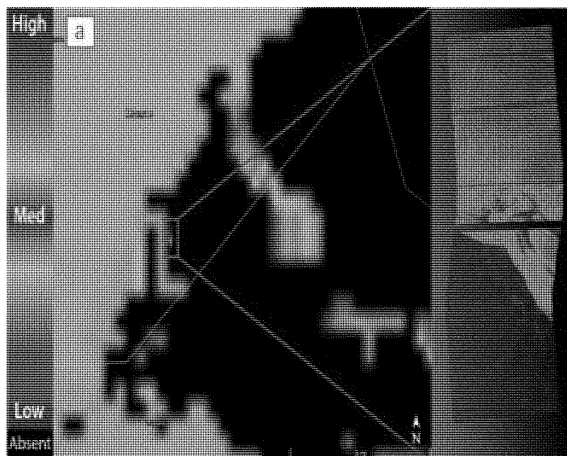
The GLRI Action Plan II incorporates a science-based adaptive management framework that is designed to guide restoration and protection actions by using the best available science and lessons learned from past and ongoing GLRI investments. During FY 2016, federal agencies and their partners finalized a conceptual framework that supplements the science-based adaptive management approach presented in the GLRI Action Plan II. The federal agencies also began a Pilot Project in the western basin of Lake Erie to test the implementation of the conceptual adaptive management framework. Below is a graphic that displays the spatial scales of project assessments and the estimated ecosystem recovery time at the given spatial scale.



Focus Area 5 Success Stories

Great Lakes Native Preyfish Restoration

In FY 2016, the GLRI funded a new, multi-agency, coregonid restoration program based on adaptive management. With lake trout populations on the rise and changes in the availability of prey across the Great Lakes, there is a need for more forage species, such as native coregonids. The multi-agency program is identifying and addressing key science needs and capabilities to support basin-wide restoration of coregonid species across the Great Lakes. The USFWS collected two million deepwater cisco eggs from Lake Michigan. The eggs were delivered to the U.S. Geological Survey (USGS) Tunison Laboratory in Cortland, NY to help meet science and fish stocking goals for restoration in Lake Ontario. This collaborative effort between USFWS and USGS led to establishing and rearing 16 different families produced from cisco gametes taken from northern Lake Huron.

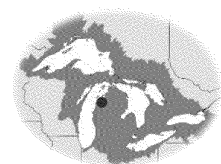


Hyperspectral Camera for HABs



During FY 2016, NOAA's Great Lakes Environmental Research Laboratory (GLERL) used an airplane mounted with a hyperspectral camera to capture images that improve harmful algal bloom (HAB) forecasts. Hyperspectral cameras capture information on HAB location and extent when satellites cannot due to cloudy conditions. There were many instances in FY 2016 where the camera was able to detect important algal scum features under clouds or nearshore, which satellites were unable to do detect. The hyperspectral camera images were converted to the cyanobacteria index (CI) and were overlaid on the NOAA Lake Erie HAB bulletin image using the same color table. The cyanobacteria index provides an important resource for the bulletin and also for water intake managers in the region.

Innovative Selective Fish Passage Project



In FY 2016, the innovative Selective Fish Passage Project was initiated to provide bi-directional movement of desired fishes while restricting movement of undesirable species through adaptive management. The Great Lakes Fishery Commission, the Grand Traverse Band of Ottawa and Chippewa Indians, USACE, the USFWS, the Michigan Department of Natural Resources, and the City of Traverse City, Michigan forged strong partnerships working on this project. On September 6th, 2016, the Traverse City Commission unanimously endorsed the Boardman River Union Street Dam as the project site. The project will match physical and behavioral attributes of fishes with technology and engineering to selectively pass desirable species and exclude invasive species at the Union Street Dam site to truly reconnect this watershed to the Great Lakes and apply lessons learned to other watersheds.

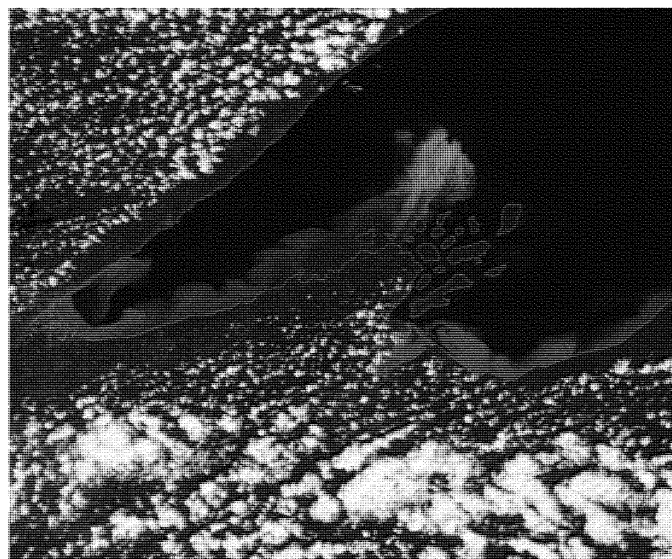


Focus Area 5 Success Stories

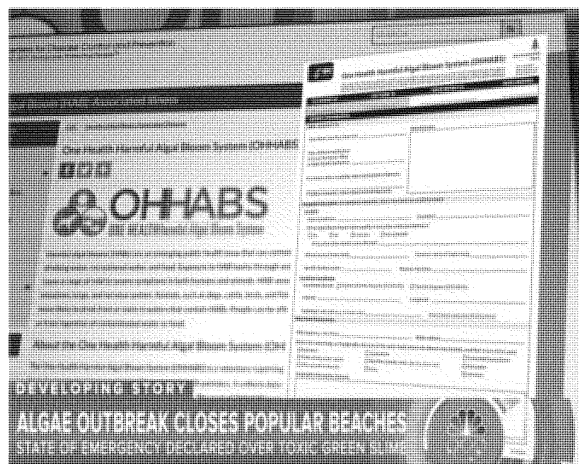
Nearshore monitoring of Historic Lake Superior Flood



In FY 2016, with funding from the GLRI, the National Park Service (NPS) and partners from the University of Wisconsin-Milwaukee's School of Freshwater Sciences monitored tributary and nearshore conditions before and after an extreme rainfall event in northern Wisconsin. This event resulted in a greater than 500-year flood event on several Lake Superior tributaries, damaging roads and infrastructure, and tragically leaving three people dead. The flooding affected Lake Superior waters, producing notable sediment plumes that extended well into the lake. The team characterized the effects of the flood plume on nearshore waters, and picked up a rare bloom of blue-green algae in the weeks following the event. Through analysis of satellite imagery and historical data, the team found that sediment plumes from south shore tributaries are reaching Apostle Islands National Lakeshore more frequently in recent years, resulting in declines in Lake Superior's celebrated water clarity.

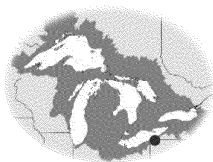


New Reporting System: Harmful Algal Blooms

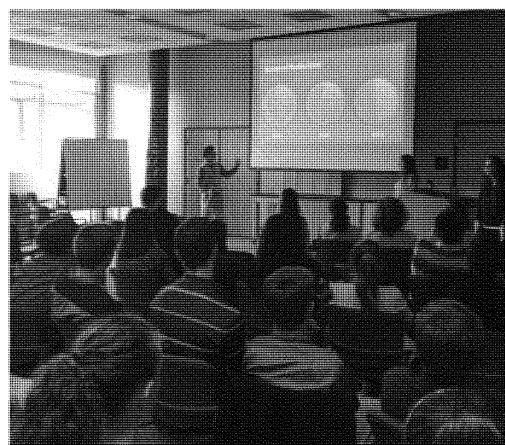


In June of FY 2016, U.S. Center for Disease Control (CDC) launched the One Health Harmful Algal Bloom System (OHHABS), a voluntary reporting system available to Great Lakes and other state agencies to report human and animal cases of illnesses from HAB-associated exposures, as well as environmental data about HABs. The goal of OHHABS is to collect information to support the understanding and prevention of HABs and HAB-associated illnesses. CDC developed the OHHABS as part of the comprehensive GLRI approach to nutrient reduction and HAB mitigation in the Great Lakes. CDC concurrently launched the HAB-associated illnesses website (www.cdc.gov/habs) as a platform to educate the public about HABs and to provide HAB resources to public health professionals about this growing public health concern.

GLRI Sponsors Great Lakes Awareness Day



In FY 2016, GLRI partners led Great Lakes Awareness Day to share Great Lakes science with basin citizens through projects developed by CGLL-trained teachers and students. This year in Pennsylvania the event was the culmination of a yearlong, student driven effort in ten schools to develop and implement water-quality-related science learning projects. Students from the Fairview School District used science based protocol to determine the amount of micro plastics at their local beach. They recorded their data using NOAA's Debris Tracker App. The opportunity to share their work with 177 other students and 386 members of the general public was a chance for students to become the educators. CGLL teachers identified this as the highlight for the students participating.



Section 3 – Planned Activities

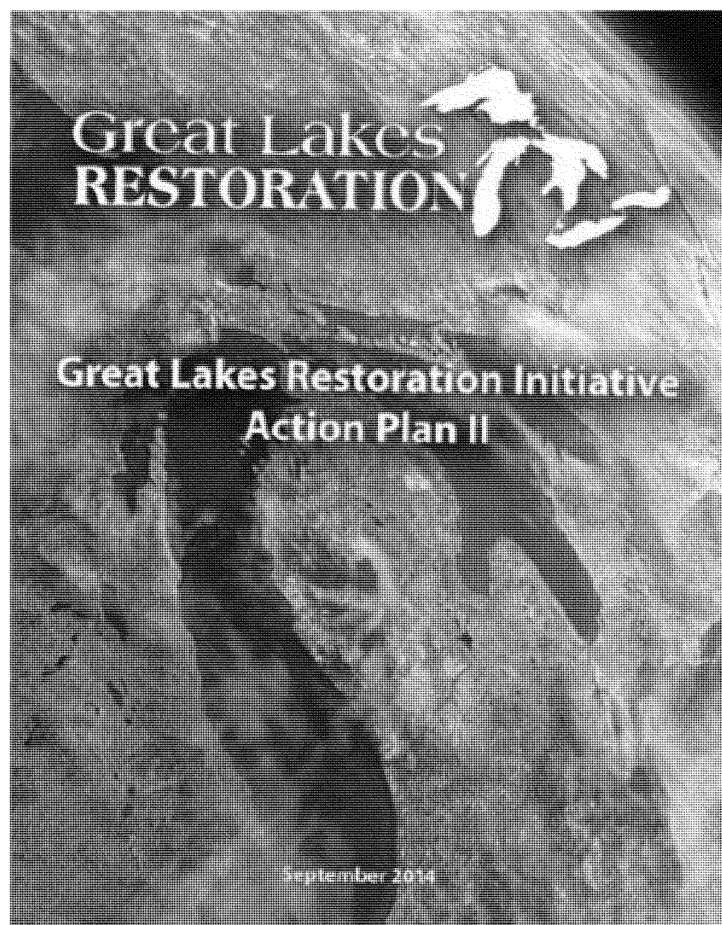
The Great Lakes Restoration Initiative Action Plan II summarizes the actions federal agencies have worked to implement during FY 2016 and summarizes what actions federal agencies plan to implement through FY 2019 using GLRI funding. These actions build on restoration and protection work carried out under the first Great Lakes Restoration Initiative Action Plan, with a major focus on:

- Cleaning up Great Lakes Areas of Concern
- Preventing and controlling invasive species
- Reducing nutrient runoff that contributes to algal blooms
- Restoring habitat to protect native species
- Supporting Great Lakes resilience, education, and adaptive management.

The Great Lakes Restoration Initiative Action Plan II incorporates a science based adaptive management framework that will be used to prioritize ecosystem problems, to select projects to address those problems, and to assess the effectiveness of those projects. The federal partnership has developed Measures of Progress to track all actions implemented under Action Plan II.

The Great Lakes Restoration Initiative Action Plan II commits agencies to develop and incorporate climate resiliency criteria into project selection processes to ensure climate resiliency of GLRI-funded projects. The agencies collaborating on the GLRI developed the criteria in FY 2016, and are now applying the criteria initiative-wide.

The GLRI Action Plan II incorporates rigorous feedback from the Great Lakes Advisory Board, the U.S. EPA Science Advisory Board, the U.S. Government Accountability Office, the Congressional Research Service, states, tribes, municipalities, and the general public. The Great Lakes Interagency Task Force is grateful for these recommendations and will continue to actively seek input as it implements and continually improves the GLRI.



Section 4 – Financial Reporting

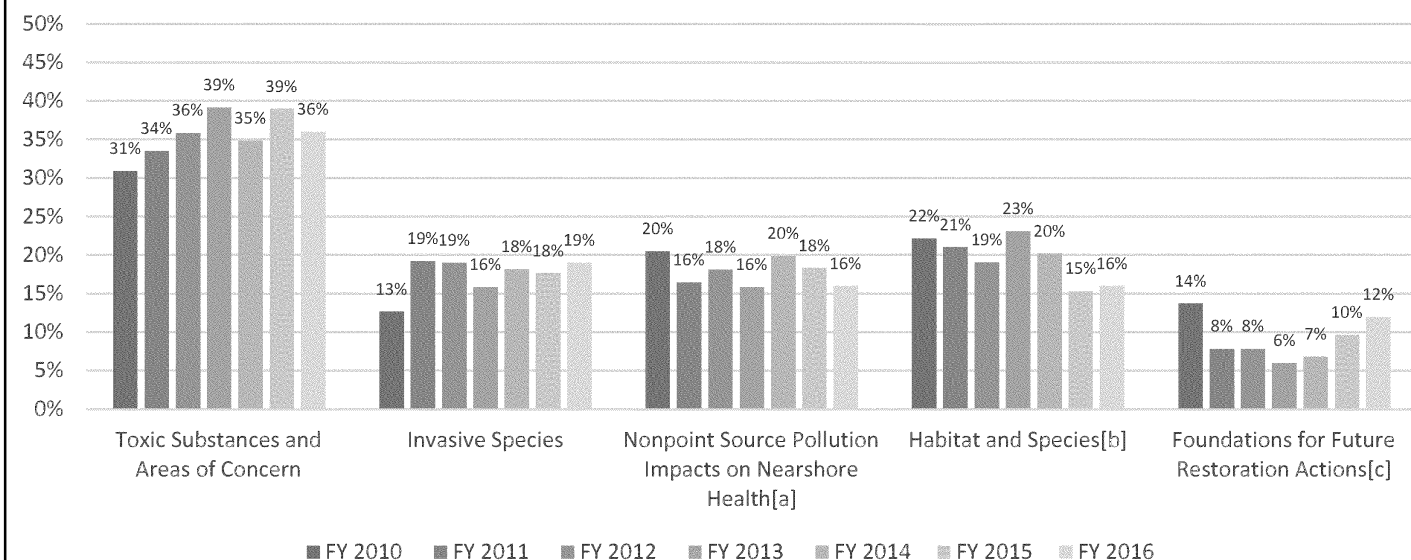
From FY 2010 to FY 2016, the USEPA has been appropriated approximately \$2.26 billion in GLRI funds. In order to support effective project implementation, agencies that receive GLRI funds use multiple funding mechanisms, including interagency agreements, fund transfers, competitive grants, and capacity-building grants to states and tribes.

Table 1 and Chart 1 provide information on FY 2010 – FY 2016 GLRI funding by focus area. Table 2 provides summary information for FY 2010 – FY 2015 GLRI funding by agency (more detailed information for these years can be found in previous Great Lakes Restoration Initiative Reports to Congress and the President for FY 2010-FY 2015). Table 3 provides more detailed information for FY 2016 by agency.

Table 1 - GLRI FY2010 - FY 2016 Focus Area Allocations as of October 6, 2016 (Dollars in Thousands)

Focus Area	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Toxic Substances and Areas of Concern	\$146,946	\$100,400	\$107,500	\$111,000	\$104,600	\$117,000	\$108,000
Invasive Species	\$60,265	\$57,500	\$56,900	\$45,000	\$54,600	\$53,000	\$57,000
Nonpoint Source Pollution Impacts on Nearshore Health^[a]	\$97,331	\$49,250	\$54,300	\$45,000	\$59,700	\$55,000	\$49,000
Habitat and Species^[b]	\$105,262	\$63,000	\$57,200	\$65,500	\$60,600	\$46,000	\$51,000
Foundations for Future Restoration Actions^[c]	\$65,196	\$29,250	\$23,500	\$17,000	\$20,500	\$29,000	\$35,000
TOTAL	\$475,000	\$299,400	\$299,500	\$283,500	\$300,000	\$300,000	\$300,000

Chart 1 - Great Lakes Restoration Initiative Fiscal Years 2010-2016 Focus Area Allocations (as of October 1, 2016)



^[a] Nearshore Health and Nonpoint Source Pollution in FY 2010-FY 2014.

^[b] Habitat and Wildlife Protection and Restoration in FY 2010-FY 2014.

^[c] Accountability, Education, Monitoring, Evaluation, Communication, and Partnerships in FY 2010 – FY 2014.

Table 2 – FY 2010 - FY 2015 Great Lakes Restoration Initiative Funding by Agency
(as of October 6, 2016)

Agency ¹	Obligations ²						
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Total
DHS-USCG	\$6,144,359	\$1,617,774	\$2,512,533	\$2,450,986	\$1,278,326	\$2,006,364	\$16,010,342
DOC-NOAA	\$30,536,774	\$18,289,090	\$16,242,588	\$25,504,538	\$35,170,162	\$24,817,678	\$150,560,830
DOD-USACE	\$49,272,025	\$30,663,366	\$35,408,903	\$31,597,882	\$28,503,609	\$48,389,326	\$223,835,111
DOI-BIA	\$3,416,000	\$6,316,027	\$4,718,837	\$3,985,077	\$3,949,629	\$4,749,710	\$27,135,280
DOI-NPS	\$10,479,525	\$4,861,269	\$3,527,109	\$3,012,927	\$3,176,525	\$3,142,389	\$28,199,744
DOI-USFWS	\$69,348,690	\$48,690,188	\$45,699,986	\$40,000,560	\$49,037,576	\$41,393,402	\$294,170,402
DOI-USGS	\$23,717,195	\$14,531,602	\$13,051,766	\$12,661,690	\$19,832,266	\$23,432,650	\$107,227,169
DOT-FHWA	\$2,500,000	\$1,218,000	\$1,221,000	\$973,156	\$964,500	\$0	\$6,876,656
DOT-MARAD	\$4,000,000	\$2,694,600	\$2,446,927	\$2,311,345	\$1,790,785	\$1,290,832	\$14,534,489
HHS-ATSDR/CDC	\$5,500,000	\$2,195,661	\$2,200,000	\$1,415,500	\$1,739,134	\$1,737,873	\$14,788,168
USDA-APHIS	\$1,884,727	\$598,389	\$1,134,000	\$870,986	\$1,245,775	\$1,245,794	\$6,979,672
USDA-NRCS	\$34,092,000	\$16,787,976	\$25,603,174	\$19,253,462	\$24,280,233	\$23,280,505	\$143,297,350
USDA-USFS	\$15,458,000	\$8,889,772	\$6,718,080	\$5,928,545	\$6,401,390	\$6,289,519	\$49,685,306
IA Totals:	\$256,349,296	\$157,353,715	\$160,484,902	\$149,966,654	\$177,369,910	\$181,776,042	\$1,083,300,519
EPA, GLFC, IJC, and Misc IAs	\$213,361,970	\$135,426,023	\$135,461,807	\$131,076,241	\$121,801,295	\$118,043,321	\$855,170,657
Total Obligated	\$469,711,266	\$292,779,738	\$295,946,709	\$281,042,896	\$299,171,204	\$299,819,363	\$1,938,471,176
Returned³	\$5,288,734	\$6,620,262	\$3,573,291	\$2,655,104	\$828,796	\$180,637	\$19,146,824
GLRI Grand Totals:	\$475,000,000	\$299,400,000	\$299,520,000	\$283,698,000	\$300,000,000	\$300,000,000	\$1,957,618,000

¹ Individual Agency allocations from each appropriation can be found in previous Reports to Congress and the President.

² Obligations are the amount of orders placed; interagency agreements, contracts or grants awarded; and similar transactions by EPA. The amount reflects deobligations. Deobligation generally results from completing a project under budget, contract termination, changes in project scope or focus, or other unforeseeable circumstances.

³ Returned funds are determined by subtracting obligations as of October 6, 2016 from appropriated funds. Returned funds generally result from deobligating funds as a result of completing a project under budget, contract termination, changes in project scope or focus, or other unforeseeable circumstances. The amount in this line can also include reserves that have been established to provide for contingencies or to effect savings under the Antideficiency Act.

**Table 3 - Great Lakes Restoration Initiative Fiscal Year 2016 Funding by Agency
(as of October 6, 2016)**

Agency	FY 2016 Initial Allocation^[a]	FY 2016 Actual Allocation^[b]	FY2016 Total Obligations
DHS-USCG	\$2,053,193.00	\$1,274,434.00	\$1,274,434.00
DOC-NOAA	\$16,173,635.00	\$15,173,635.00	\$15,173,635.00
DOD-USACE	\$26,416,169.00	\$32,322,840.00	\$32,322,840.00
DOI-BIA	\$4,473,031.00	\$6,203,031.00	\$6,203,031.00
DOI-NPS	\$3,749,310.00	\$3,749,310.00	\$3,749,310.00
DOI-USFWS	\$37,525,929.00	\$44,245,929.00	\$44,245,929.00
DOI-USGS	\$19,182,271.00	\$22,018,882.00	\$22,018,882.00
DOT-MARAD	\$2,105,892.00	\$2,105,892.00	\$2,105,892.00
HHS-ATSDR/CDC	\$1,692,394.00	\$1,692,394.00	\$1,692,394.00
USDA-APHIS	\$1,088,649.00	\$1,088,649.00	\$1,088,649.00
USDA-NRCS	\$19,297,877.00	\$19,286,877.00	\$18,879,852.00
USDA-USFS	\$10,257,831.00	\$10,257,831.00	\$10,257,831.00
<i>IA Totals:</i>	\$144,016,181.00	\$159,419,704.00	\$159,012,679.00
EPA, GLFC, and Misc. IAs	\$155,983,819.00	\$140,580,296.00	\$67,589,041.23^[c]
<i>GLRI Grand Totals:</i>	\$300,000,000.00	\$300,000,000.00	\$226,601,720.23^[D]

^[a] Based on allocations to each Agency approved by the Interagency Task Force in April 2016.

^[b] Federal agencies work collaboratively to ensure that funding is used for the highest priority Great Lakes projects. The “Actual Allocations” (funding provided to each agency) reflect adjustments made to address emerging priorities (e.g., keep Asian carp from becoming established in the Great Lakes) and to maximize environmental outcomes.

^[c] Components are: (i) grants totaling \$38,301,336 (including funding for the Great Lakes Fishery Commission, an organization identified in the President’s Budget); (ii) Great Lakes National Program Office support costs (payroll, travel, general expenses, and working capital) totaling \$12,959,833; and (iii) contracts and miscellaneous interagency agreements (each less than \$1 million) totaling \$16,327,872.

^[D] EPA expects to award funding under existing request for applications, invitations to States and Tribes, and identified AOC restoration projects for outstanding unobligated funding.

APPENDIX A – GLRI ACTION PLAN II: MEASURES OF PROGRESS

The table below provides an overview of the results achieved for each of the 34 Measures of Progress in the Great Lakes Restoration Initiative Action Plan II. Targets for Measures of Progress were established under assumptions contained in Action Plan II. Ten Measures of Progress have annual targets. The remaining Measures of Progress will be reported annually to track progress towards long term goals that will take more than five years to reach. Detailed information is provided in the following pages. *In the table below red indicates the target was not met, green indicates the target was met, and gray indicates that only results will be provided since a target does not apply.*

Focus Area	GLRI Action Plan II Measures	Result/Target	
		FY 2015	FY2016
Toxic Substances	1.1.1 AOC Management Actions <i>(Cumulative)</i>	7/8	8/9
	1.1.2 BUI's <i>(Cumulative)</i>	60/60	65/65
	1.2.1 People Provided Fish Consumption Information	220,843	207,953
	1.2.2 Fish/Wildlife Emerging Contaminant Projects	14	7
Invasive Species	2.1.1 Rapid Response Exercises	21/8	11/8
	2.1.2 Projects Blocking Pathways	8	14
	2.1.3 Early Detection Activities	15	3
	2.2.1 Aquatic /Terrestrial Acres <i>(Cumulative)</i>	101,392/94,500	115,889/110,000
	2.2.2 Invasive Tributary Miles	0	0
	2.3.1 Invasive Technologies <i>(Cumulative)</i>	62	65
	2.3.2 Invasive Collaboratives <i>(Cumulative)</i>	4	4
Nonpoint Source Pollution Impacts on Nearshore Health	3.1.1 Agricultural Phosphorus Reduction Projected <i>(Cumulative)</i>	160,117/130,000	402,943/310,000
	3.1.2 Nutrient/Sediment Ag. Acres	101,574	89,211
	3.1.3 Nutrient/Sediment Reduction <i>(Cumulative)</i>	NA	NA
	3.2.1 Urban Runoff Projected <i>(Cumulative)</i>	37/30	116/70
	3.2.2 Urban Runoff Projects	18	36
	3.2.3 Urban Runoff Captured of Treated <i>(Cumulative)</i>	NA	NA
Habitats and Species	4.1.1 Habitat Tributary Miles <i>(Cumulative)</i>	3,855/2,200	4,615/4,200
	4.1.2 Shoreline Miles	313/75	662/350
	4.1.3 Coastal Wetland Acres <i>(Cumulative)</i>	7,033/7,000	17,540/15,000
	4.1.4 Other Habitat <i>(Cumulative)</i>	146,815/127,000	167,218/167,000
	4.2.1 Federally-Listed Species Projects	10	17
	4.2.2 Self-Sustaining Species Projects	47	28
Foundations for Future Restoration Actions	5.1.1 Climate Resiliency Criteria Developed (2016)	NA	Developed
	5.1.2 Climate Resiliency Criteria Incorporated (2017)	NA	NA
	5.2.1 Trained Educators	331	407
	5.2.2 People Educated	24,785	27,989
	5.3.1 Evaluations	Completed	Completed
	5.3.2 Annual Monitoring	Conducted	Conducted
	5.3.3 Targeted Watersheds, Habitats, Species to prioritize Funding	Identified	Identified
	5.3.4 Annual GLRI Reports	Issued	Issued
	5.3.5 Triennial GLWQA Reports	NA	NA
	5.3.6 Triennial State of the Lakes Report	NA	NA
	5.3.7 Online Information	Updated	Updated

GLRI Action Plan II Measures of Progress – Detailed Information

	Measure	Target	Result	Explanation/Additional Information
1.1.1	Areas of Concern in the Great Lakes where all management actions necessary for delisting have been implemented (cumulative) ¹	FY 16: 9 FY 15: 8 Baseline: 7	FY 16: 8 FY 15: 7	AOC Management Actions were completed at the St. Clair River AOC. In addition, the program expects to complete Management Actions at one additional AOC by the end of the calendar year 2016. The completed Management Actions in the River Raisin AOC were delayed due to the complexity of the sediment cleanup.
1.1.2	Area of Concern Beneficial Use Impairments Removed (cumulative) ¹	FY 16: 65 FY 15: 60 Baseline: 52	FY 16: 65 FY 15: 60	Sheboygan (WI) - Eutrophication. 11/24/15. Niagara R (NY). Fish Tumors and other deformities. 1/28/16 Rochester (NY), Degradation of Phytoplankton and Zooplankton. 5/9/2016 St. Clair River (MI), Beach Closings. 4/13/16 St. Mary's River (MI) - Beach Closing. 7/27/2016
1.2.1	Number of people provided information on the risks and benefits of Great Lakes fish consumption by GLRI-funded projects	NA	FY 16: 207,953 FY 15: 220,843	Information was provided by HHS-ATSDR and EPA.
1.2.2	Number of GLRI-funded projects that identify and/or assess impacts of emerging contaminants on Great Lakes fish and wildlife	NA	FY 16: 7 FY 15: 14	Projects were funded by EPA, BIA, and DOI-USGS.
2.1.1	Number of GLRI-funded Great Lakes rapid responses or exercises conducted	FY 16: 8 FY 15: 8 Baseline: NA	FY 16: 11 FY 15: 21	The 8 Great Lakes States have committed to conducting annual training exercises, but prioritize activities to respond to detections of new invasive species. In FY 2016 multiple state agencies and others completed 11 actual responses.

2.1.2	Number of GLRI-funded projects that block pathways through which aquatic invasive species can be introduced to the Great Lakes ecosystem	NA	FY 16: 14 FY 15: 8	Projects included work to reduce the spread of invasive species by hunters, anglers, and the recreational boat pathways.
2.1.3	Number of GLRI-funded early detection monitoring activities conducted	NA	FY 16: 3 FY 15: 15	Early detection activities were conducted in FY 2016. Activities included both conventional monitoring techniques (nets, traps, electroshocking) as well as environmental DNA sampling.
2.2.1	Number of aquatic/terrestrial acres controlled by GLRI-funded projects (cumulative)	FY 16: 110,000 ² FY 15: 94,500 ² Baseline: 36,000	FY 16: 115,889 FY 15: 101,392	Target was previously raised to 94,500 during FY 2016 budget development because the FY 2014 end-of-year result exceeded the previously set cumulative target for FY 2016.
2.2.2	Number of tributary miles protected by GLRI-funded projects	NA	FY 16: 0 FY 15: 0	Protected tributary miles are reported once a project is complete and the barrier is in use.
2.3.1	Number of technologies and methods field tested by GLRI-funded projects	NA	FY 16: 65 FY 15: 62	Technologies were field tested by federal agencies and their partners. Technologies included ballast water management systems and a tool for detecting Asian Carp.
2.3.2	Number of collaboratives developed or enhanced with GLRI funding	NA	FY 16: 4 FY 15: 4	Invasive species collaboratives counted under this Measure include the Asian Carp Regional Coordinating Committee lead by USFWS, the Monoecious Hydrilla Collaborative lead by USACE, the Mussels Collaborative lead by USGS, and the Phragmites Collaborative also lead by USGS.
3.1.1	Projected phosphorus reductions from GLRI-funded projects in targeted watersheds (measured in pounds) (cumulative)	FY 16: 310,000 FY 15: 130,000 Baseline: NA	FY 16: 402,943 FY 15: 160,117	Projected phosphorus reductions are from USEPA and NRCS (Farm Bill Programs for Reducing Ag Nonpoint Source Loading). Projects were implemented in the following watersheds: Genesee, Green Bay-Lower Fox, Saginaw Bay-Saginaw, Western Lake Erie-Maumee, Lake Michigan-Wisconsin, Blanchard, Black-Macatwa, Kawkawlin-Pin, Sandusky, Western Lake Erie, Lower Maumee, and Lower Fox.

3.1.2	Number of GLRI-funded nutrient and sediment reduction projects in targeted watersheds (measured in acres)	NA	FY 16: 89,211 FY 15: 101,574	Contributing agencies: NRCS, EPA, and USACE. Practices planned or implemented in FY 2016 include: cover crops, conservation tillage, filter strips, drainage water management, nutrient management, constructed wetlands, waste storage facilities, contour buffer strips.
3.1.3	Measured nutrient and sediment reductions from monitored, GLRI-funded projects in targeted watersheds (measured in pounds)	NA	FY 16: NA FY 15: NA	Results are reported for this measure after a reduction has been measured and quantified through the implementation of standardized USGS monitoring and statistical designs. As quantification of these results requires long-term monitoring, results are not anticipated until FY2017 at the earliest. USGS will provide preliminary results in FY 2017 and final results at the end of FY 2019.
3.2.1	Projected volume of untreated urban runoff captured or treated by GLRI-funded projects (measured in millions of gallons) (cumulative)	FY 16: 70 FY 15: 30 Baseline: NA	FY 16: 116 FY 15: 37	Result includes USEPA Shoreline cities grants in: East Chicago, IN, Ashtabula, OH, Cleveland, OH, Huron, OH, Sandusky, OH, Vermillion, OH, Duluth, MN, Evans, NY, Algoma, WI, Ashland, WI, Manitowoc, WI, Two Rivers, WI, and Wind Point, WI.
3.2.2	Number of GLRI-funded projects implemented to reduce the impacts of untreated urban runoff on the Great Lakes (cumulative)	NA	FY 16: 36 FY 15: 18	Practices planned or implemented in FY 2016 include: bioretention ponds, storm water trees, drainage water management, porous pavement, bio-swales, constructed wetlands, rain gardens, and greenways.
3.2.3	Measured volume of untreated urban runoff captured or treated by monitored GLRI-funded projects	NA	FY 16: NA FY 15: NA	Results for this measure are reported after a measured reduction has been quantified through USGS monitoring and statistical designs. As monitoring and statistical designs are still under development by USGS, results are not anticipated until FY 2017 at the earliest.
4.1.1	Number of miles of Great Lakes tributaries reopened by GLRI-funded projects (cumulative)	FY 16: 4,200 ² FY 15: 2,200 Baseline: 1,900	FY 16: 4,615 FY 15: 3,855	Projects to remove dams and impediments to fish passage. Projects were completed in FY 2016 and contributed to surpassing the target of tributary miles reopened.

4.1.2	Number of miles of Great Lakes shoreline and riparian corridors protected, restored and enhanced by GLRI-funded projects (cumulative)	FY 16: 350 ² FY 15: 75 Baseline: 0	FY 16: 662 FY 15: 313	In FY 2016 agencies continued to accelerate projects to protect, restore, and/or enhance targeted coastal habitats and key river corridors in the Great Lakes.
4.1.3	Number of acres of Great Lakes coastal wetlands protected, restored and enhanced by GLRI-funded projects (cumulative)	FY 16: 15,000 FY 15: 7,000 Baseline: 0	FY 16: 17,540 FY 15: 7,033	Results represent the significant projects done by federal agencies as well as targeted actions by individual Great Lakes states.
4.1.4	Number of acres of other habitats in the Great Lakes basin protected, restored and enhanced by GLRI -funded projects (cumulative)	FY 16: 167,000 ² FY 15: 127,000 Baseline: 117,000	FY 16: 167,218 FY 15: 146,815	In FY 2016 federal agencies completed work in terrestrial and aquatic Great Lakes systems as well as targeted actions on federal and state protected lands.
4.2.1	Number of GLRI-funded projects that promote recovery of federally-listed endangered, threatened, and candidate species (cumulative)	NA	FY 16: 17 FY 15: 10	In FY 2016 continued significant progress was made on the recovery of piping plover. Federal agencies reprioritized actions for an additional seven federally listed species.
4.2.2	Number of GLRI-funded projects that promote populations of native non-threatened and non-endangered species self-sustaining in the wild	NA	FY 16: 28 FY 15: 47	Projects focused efforts on protecting lake sturgeon, lake trout, and deep water coregonid. New federal agency collaborations were initiated to increase efficiencies for this measure.
5.1.1	By 2016, a standardized set of climate resiliency criteria will be developed for GLRI projects	FY 16: Complete FY 15: NA	FY 16: Complete FY 15: NA	Federal agencies have developed and begun to incorporate climate resiliency criteria into the planning and implementation of GLRI-funded projects.
5.1.2	Starting in 2017, projects will include climate resiliency criteria in planning and implementation	FY 16: Complete FY 15: NA	FY 16: Complete FY 15: NA	Development of climate resiliency criteria is completed. Agencies will begin incorporating the criteria into project planning and implementation starting in FY 2017.

5.2.1	Number of educators trained through GLRI-funded projects	NA	FY 16: 407 FY 15: 331	GLRI funding helped train 407 educators in FY 2016.
5.2.2	Number of people educated on the Great Lakes ecosystem through GLRI-funded place-based experiential learning activities	NA	FY 16: 27,989 FY 15: 24,785	GLRI educated over 27,000 people on the Great Lakes ecosystem through GLRI-funded place-based experiential learning activities through National Park Service interpretative programs.
5.3.1	Project evaluations completed and used to prioritize GLRI funding decisions each year	NA	FY 16: Completed and used FY 15: Completed and used	GLRI-funded projects were routinely evaluated to ensure that they will be implemented as proposed. Progress in achieving objectives for existing projects was used to prioritize GLRI-funding decisions. A new accountability system (the Environmental Accomplishments in the Great Lakes system) was implemented in FY 2015 to track the progress of GLRI-funded projects in meeting the Measures of Progress in the GLRI Action Plan II.
5.3.2	Annual Great Lakes monitoring conducted and used to prioritize GLRI funding decisions each year	NA	FY 16: Completed and used FY 15: Completed and used	Federal agencies and partners conducted comprehensive monitoring to assess the status and trends of the Great Lakes ecosystem. Long-term monitoring of coastal wetlands, contaminants, nutrients, zooplankton, phytoplankton, harmful algal blooms, benthic communities, and prey fish among many other components was conducted throughout the basin. The monitoring data and information from previous years was used to identify the most significant Great Lakes problems and prioritize funding decisions to address those problems.
5.3.3	GLRI-targeted watersheds, habitats and species identified and used to prioritize GLRI funding decisions	NA	FY 16: Identified and used FY 15: Identified and used	GLRI agencies and partners identified watersheds, habitats, and species to be targeted in FY 2016 and beyond. The Great Lakes Advisory Board, states, tribes, and other stakeholders provided input to the agencies on how best to target GLRI resources. As part of efforts in all five focus areas, GLRI continues to prioritize work to accelerate the cleanup of Areas of Concern, reduce harmful algae, and prevent the introduction of new invasive species.

5.3.4	Issue Annual GLRI Reports to Congress and the President	NA	FY 16: Issued FY 15: Issued	The Great Lakes Restoration Initiative Report to Congress and the President is issued annually.
5.3.5	Issue Great Lakes Water Quality Agreement Triennial Progress Reports of the Parties	NA	FY 16: Issued	The Great Lakes Water Quality Agreement Triennial Progress Reports of the Parties was issued in September of 2016.
5.3.6	Issue triennial State of the Lakes reports	NA	FY 16: Issued	The first Triennial State of the Lakes Report under the 2012 Great Lakes Water Quality Agreement was issued in FY 2016.
5.3.7	Periodically update publicly available online information about the GLRI	NA	FY 16: Updated FY 15: Updated	Updates included: publication of the FY 2010-FY 2015 GLRI Report to Congress and the President; project updates; Great Lake Advisory Board information; and links to information from other agencies.

^[1] Results from this Action Plan measure are achieved through GLRI funding as well as other non-GLRI federal and/or state funding.

^[2] This target has been adjusted from the Action Plan

To: Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
From: Jackson, Ryan
Sent: Wed 3/8/2017 5:14:26 PM
Subject: Re: Chlorpyrifos One-Pager

Deliberative Process Privilege/Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

On Mar 8, 2017, at 11:18 AM, Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov> wrote:

Got it. I can meet between 2:45 and 3:30 or at 5. Preference for 2:45.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

From: Schnare, David

Sent: Wednesday, March 08, 2017 10:40 AM

To: Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>

Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha

<dravis.samantha@epa.gov>

Subject: RE: Chlorpyrifos One-Pager

I can meet any time after 1:30.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Let me know when you want to meet.

dschnare

From: Cleland-Hamnett, Wendy

Sent: Wednesday, March 8, 2017 10:37 AM

To: Schnare, David <schnare.david@epa.gov>

Subject: RE: Chlorpyrifos One-Pager

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

From: Schnare, David

Sent: Tuesday, March 07, 2017 10:29 PM

To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>

Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>

Subject: Fwd: Chlorpyrifos One-Pager

Deliberative Process Privilege/Ex. 5

dschnare

Sent from my iPhone

Begin forwarded message:

From: "Dravis, Samantha" <dravis.samantha@epa.gov>

Date: March 7, 2017 at 5:51:27 PM EST
To: "Schnare, David" <schnare.david@epa.gov>, "Brown, Byron" <brown.byron@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>
Subject: FW: Chlorpyrifos One-Pager

Making sure the three of you had this as well.

From: Schwab, Justin
Sent: Tuesday, March 7, 2017 4:04 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Fwd: Chlorpyrifos One-Pager

Deliberative Process Privilege/Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Vaden, Stephen - OGC" <Stephen.Vaden@ogc.usda.gov>
Date: March 7, 2017 at 11:02:30 AM EST
To: "schwab.justin@epa.gov" <schwab.justin@epa.gov>
Subject: Chlorpyrifos One-Pager

Justin,

Attached, please find a brief document outlining: **Deliberative Process Privilege/Ex. 5**
Deliberative Process Privilege/Ex. 5 As always, I am happy to discuss any of the points or put your staff in contact with our wonderful career people. They and I are willing to assist you in any way.

Stephen



Stephen Alexander Vaden

U.S. Department of Agriculture

Office of the General Counsel

**Senior Adviser to the Office of General
Counsel**

Whitten Building, Suite 107W

' 202-720-3351 (Voice)

To: Brown, Byron[brown.byron@epa.gov]; Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Dravis, Samantha
Sent: Tue 3/7/2017 10:48:38 PM
Subject: FW: FR hold list

Deliberative Process Privilege/Ex. 5

It would be great if we had another chance to meet before I leave and go back through the list of midnight rules.

From: Kreutzer, David
Sent: Tuesday, March 7, 2017 5:43 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Sugiyama, George <sugiyama.george@epa.gov>
Subject: FR hold list

Samantha,

Here are my memos regarding two items on the highlighted OMB list of rules. I would like to chat with you regarding

Deliberative Process Privilege/Ex. 5

David

David W. Kreutzer, Ph.D.

202.564.3113

IMPORTANT: Please note that any correspondence with this account may become a federal record and be subject to Freedom of Information Act (FOIA) requests.

To: Schnare, David[schnare.david@epa.gov]
From: Minoli, Kevin
Sent: Mon 2/13/2017 2:03:12 PM
Subject: Re: Pruitt request - update on deadlines

I've asked folks to run it already, so it should be today.

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Feb 13, 2017, at 8:54 AM, Schnare, David <schnare.david@epa.gov> wrote:

Thanks, please do. When can I get it?

d.

From: Minoli, Kevin
Sent: Monday, February 13, 2017 8:54 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: Re: Pruitt request - update on deadlines

Hi David- This is our litigation deadlines chart. We can generate an updated version of it for folks. Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Feb 13, 2017, at 7:40 AM, Schnare, David <schnare.david@epa.gov> wrote:

Kevin:

I'm not sure where the attached came from or why it was put together, but Scott Pruitt has seen it and wants it update so that he can read it before he is sworn in. Can we get this updated by COB Tuesday? (Monday would be even better.)

Dschnare

<OGC Deadlines 12-19-2016.pdf>

To: Schnare, David[schnare.david@epa.gov]
From: John Hall
Sent: Fri 3/3/2017 3:45:11 PM
Subject: RE: Meeting request to discuss EPA support for peer reviews
Center for Regulatory Reasonableness Letter to the Editor 2-21-17 Final.pdf

David

As you know several requests have been submitted to address major EPA actions in PA, MA and MN that were based on junk science – or no science at all.

We believe that the best way to resolve the science issues is for the new administration to support the request for peer review (which the prior administration turned down for both Taunton and the PA TMDLs).

Please let me know if you have time to discuss whether EPA will support the request.

PS – Here is a Letter to the Editor CRR submitted to the Post on EPA's scientific abuses – of course it wasn't printed.

John

John C. Hall

Executive Director

Center for Regulatory Reasonableness

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: John Hall

Sent: Friday, February 10, 2017 12:10 PM

To: 'Schnare, David'

Subject: RE: Various Junk Science/Illegal Rulemaking Projects Soon to Land on Your Doorstep (can we chat when you have a few minutes)

David

I'm still working on your timeline request re: the other bad science projects I mentioned. The following cases are presently pending before various federal courts. Letters are being submitted to Administrator Pruitt asking for the matters to be placed in abeyance and EPA's position reconsidered:

Challenge to EPA Blending/Bacteria Mixing Zone Ban (CRR v. EPA – DC Cir): EPA ignored 8th Cir *ILOC v. EPA* ruling vacating the illegal/ultra vires NPDES rule modifications and re-imposed them in Nov. 2013. Nationwide cost several hundred billion for blending ban, even greater cost for bacteria mixing zone ban (basically means zero CSO discharge and disinfection of all stormwater discharges). Case pending decision. **Request:** Because briefing is completed, clarify to Court EPA decision to continue imposition of NPDES permitting prohibitions vacated in *ILOC v. EPA*, outside of the 8th Circuit.

Challenge to EPA Permit Action imposing State of the Art Nutrient Limits with No Site-Specific Water Quality Impacts Analyses (City of Taunton v. EPA – 1st Cir.): EPA declared entire Taunton estuary nutrient impaired and created new procedure to claim state of the art TN limits were required (aka "Sentinel Method"); Three top experts stated EPA analysis/Sentinel Method was grossly flawed - EPA HQ agreed new method had never undergone peer review or been demonstrated to be scientifically defensible. Nonetheless, EPA HQ refused to conduct peer review of new method, in violation of Peer Review Handbook governing use of new procedures

to be used in regulatory setting. EPA/EAB claimed further technical justification was unnecessary because requirements may be imposed without any “cause and effect” demonstration – which basically re-writes CWA to allow EPA to impose stringent limits without site-specific demonstration of need. Opening briefs April 1, 2017. **Status:** Letter to be submitted from affected Cities shortly asking for matter to be moved to ADR process.

Challenge to Approval of MN Stream Nutrient Criteria with Unprecedented Nutrient Impairment Criteria (CRR. V EPA - DC Dist Ct): EPA promoted MN adoption of unprecedented nutrient impairment indicators (BOD and DO flux) and then approved them, even though EPA knew these parameters do not actually cause “impairment” and numerous non-nutrient factors affect them. EPA’s action will result in classifying many additional waters nutrient impaired, when they are not. Nation’s (and EPA’s) leading expert on proper BOD test usage, *Standard Methods*, informed EPA using the test to predict nutrient impairment was improper – EPA also ignored the finding of this independent expert group. Parties filing motions on administrative record. **Status:** Letter seeking reconsideration to be submitted next week. Expect contact from Congressional Representatives in support of action/reconsideration.

Challenge to NH MS4 permit (Filing on EPA NH action pending; Existing challenge to MA MS4 permit in DC Cir.): EPA radically modified MS4 permit, creating new mandates nowhere found in federal law or regulation and changing basic burden of proof for setting more restrictive requirements under CWA (presume causing impairment unless permittee proves otherwise); EPA action created federal review authority over all local land use permitting decisions – which is unprecedented overreach. NH Gov. Sununu expected to contact Administration for withdrawal of permit. Parties to meet thereafter. **Status:** Request for withdrawal of EPA MS4 permit already under consideration – ADR process likely avenue for relief.

Challenge to PA Nutrient TMDLs Using Junk Science to Impose Unattainable Reduction Mandates(Telford Boro et al v. EPA, ED PA): EPA created stringent nutrient limits for all of Eastern Pennsylvania using methods EPA’s Science Advisory Board stated were not scientifically defensible. The water quality limits EPA created are exceeded in natural background waters in Eastern PA and would require “pre-European” conditions (i.e., reforestation of entire watershed and removal of all human influences) to meet mandated nutrient load reduction requirements. Methods used to devise similar limits in nearby Wissahickon watershed also violate the laws of physics and nature (settling of dissolved substances, and plant growth occurring in the dead of winter and during major storm event when plant growth does not physically occur). EPA also rejected all field studies and peer reviewed literature confirming that plant growth would not be controlled with the proposed nutrient reduction program. **Status:** The Eastern PA communities and municipal trade assn’s will be meeting in end of February to coordinate Congressional assistance on seeking peer review of EPA’s arbitrary mandates. Letter to EPA expected in early March as well as Congressional inquiry.

PS – EPA recently proposed new blue-green algae “toxin” standards to create a basis for regulating phosphorus nationwide to extremely low levels. The analysis is so grossly incorrect and impacts on human health so clearly fabricated, it is embarrassing. Comments on this latest EPA masterpiece are due Feb 17, 2017.

-

Clearly, the New Administration has its hands full.

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: Schnare, David [<mailto:schnare.david@epa.gov>]

Sent: Thursday, January 26, 2017 6:05 PM

To: John Hall

Subject: RE: CRR Letter to New Administration - Request to Immediately Freeze NH Stormwater General Permit Issued by EPA January 18, 2017

John:

Can you send me a timeline and examples of the less than credible science R1 has been using, and that OW has approved. I need context and specifics to approach this issue. It would be very helpful if you cast that briefing in the context of EPA's Information Quality Act guidance. That is the tool I want to see used to pull the agency back into the mainstream.

d.

CENTER FOR REGULATORY REASONABLENESS

1620 I STREET, N.W.
SUITE 701
WASHINGTON, DC 20006
TELEPHONE: 202-600-7072
FAX: 202-463-4207

F 21, 2017

Letter to the Editor

Cherry Picking Science Is Not Only a Republican Administration Issue

I reviewed with great interest the recent article entitled “Scientists Discuss Challenges That May Arise...” Feb. 19, 2017, regarding an Association for the Advancement of Science conference held to discuss concerns with a possible Trump Administration attack on the scientific integrity of federal agency action. While much speculation was noted, the only factual (*i.e.*, scientifically verifiable) observation in the article was that of Joanne Carney who noted that nothing has actually happened yet to demonstrate that scientific principles will be abandoned by the Trump Administration. That statement certainly is true with regard to the Trump Administration but distinctly not true regarding the Obama Administration. In my 35 years as a practicing environmental engineer and attorney, specializing in the assessment and regulation of water quality impacts from municipal and commercial wastewater discharges, I have never witnessed a more arbitrary and abusive EPA, where science and the “rule of law” routinely took a back seat to a policy-driven regulatory agenda, with no regard, whatsoever, to cost or benefits to be achieved.

This occurred because the Obama Administration put directors of various major environmental organizations in charge of key EPA program areas and regional offices. It should come as no surprise that, for eight years, these new EPA program managers refused to respond to concerns of overregulation and scientific mismanagement. In my experience, many environmental organizations differ little from those they disparaged as conservative zealots, who know in their heart what is good for society. Such organizations often hype the facts to predict dire ecological consequences, as that creates greater donations and enrollment in their ranks. Machiavellian principles apply to all, not just the parties you disagree with. The Democrats allowed this to continue, uncontrolled, to the detriment of major Democrat-controlled cities because they want the green vote (no repeat of the Nader debacle).

The Center for Regulatory Reasonableness was established in 2014 to protect municipal interests, once it became painfully apparent that under Obama’s EPA, science was only relevant when it could be cherry picked to support the Agency’s regulatory agenda. In every case CRR reviewed (and challenged), EPA’s environmental group advocates basically disregarded any contrary evidence to bolster the “strength” of their findings. The parade of scientific abuses and

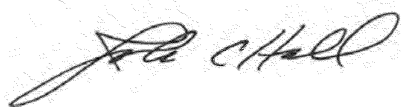
CENTER FOR REGULATORY REASONABLENESS

unnecessary economic harm this “fox in the henhouse” scenario created are exemplified by the following three examples that this author personally addressed:

- In 2008, EPA declared the Great Bay Estuary in New Hampshire nutrient impaired to appease the Conservation Law Foundation (local environmental organization) and then proceeded to assist the state in creating a stringent nutrient standard using a rubric (poor water clarity) that prior independent scientific advisory committees and federal research confirmed was completely baseless. The cost of meeting the “state of the art” nutrient reduction/transparency mandates was projected in excess of \$300 million for five New Hampshire communities. In response to scientific integrity charges filed by the Great Bay Municipal Coalition in 2012, EPA conducted an internal review, of course concluding no misconduct occurred. When the municipalities demanded to see the backup documentation for EPA’s independent, “careful review” of the well-documented scientific fabrications, EPA refused to grant access to that information. The State of New Hampshire eventually rescinded the flawed standards and impairment designation following the recommendations of a 2014 blue ribbon peer review panel (which EPA also refused to participate in). *Shameless disregard for science.*
- In eastern Pennsylvania from 2008 to 2015, EPA created numerous nutrient reduction mandates using a procedure that EPA’s Science Advisory Board determined was not scientifically defensible in 2010. EPA justified its action by merely changing the name of the flawed procedure from “stressor response” to “weight of evidence.” The result of these new “scientific” analyses was a demand for “pre-European conditions” (*i.e.*, depopulation of the entire watershed). EPA’s 2013 “expert consultant” analyses for Wissahickon Creek violated the laws of physics by claiming that dissolved substances settle in streams and that plants grow under flood conditions that actually scour plants from the system (you can’t make this stuff up). EPA is presently asserting that their technical findings apply to all eastern Pennsylvania streams; the cost of compliance is not calculable. Multiple lawsuits have been filed and are pending. *Ends justify the means “technical” process.*
- In 2013, the 8th Circuit Court of Appeals ruled that EPA had illegally modified three nationally applicable Clean Water Act rules and was attempting to impose requirements that were beyond its statutory authority. The nationwide cost to comply with these “*ad hoc*” regulatory changes were estimated *by EPA* to exceed \$250 billion. Six months after the Appellate Court’s decision that vacated the illegal rule modifications, Nancy Stoner, the former NRDC official now running the federal water program, publicly announced that EPA would continue to impose the vacated mandates outside of the 8th Circuit. When EPA was sued, again, the Agency sought to hide the documents that confirmed the decision that was rendered and transmitted to its Regional Offices. Two years later, the documents were inadvertently released by EPA, verifying the Agency’s decision and that attorneys for EPA and the Justice Department purposefully misrepresented EPA’s actions to the DC Circuit in the hope of having the case dismissed. A final Appellate Court ruling on that matter is now pending. *Complete disdain for the rule of law.*

CENTER FOR REGULATORY REASONABLENESS

Unfortunately, these are not the only cases of EPA's gross mismanagement and scientific malfeasance greatly impacting communities throughout the country that CRR is challenging. All of this abusive behavior occurred in the name of "environmental protection." While some might like to believe that "science integrity" is a Republican administration problem, this author, who voted twice for President Obama, can assure you it is not. While reporting on overregulation is not popular with most media, balanced reporting on this topic would provide a great service to the American public.

A handwritten signature in black ink, appearing to read "John Hall", with a stylized, cursive script.

John Hall
Executive Director
Center for Regulatory Reasonableness
Washington, DC

To: Schnare, David[schnare.david@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]
From: Grantham, Nancy
Sent: Mon 3/13/2017 11:18:57 AM
Subject: Hot topics for 3/13 -- will bring you a hard copy ..thanks ng
DRAFT 3-8-2017 Daily Hot Topics (003).docx

Daily Hot Topics
3-13-2017

RMP Rule	<ul style="list-style-type: none"> Effective date of the Risk Management Program rule is expected to be delayed 90 days; industry groups filed a petition for reconsideration. Administrator signature needed by March 13
Gold King Mine	<ul style="list-style-type: none"> Guidance on Gold King Mine superfund reimbursement under WINN Act is being developed; limited to state, local and tribal governments seeking additional reimbursements; expands timeframes. WINN Act requires initial actions by March 16
Flint	<ul style="list-style-type: none"> Award of \$100 million DWSRF funds to Flint by March 17 Ryan Jackson finalizing communications plans with White House
CAFÉ	<ul style="list-style-type: none"> EPA announces its intention to reconsider the Final Determination of the Mid-Term Evaluation of greenhouse gas (GHG) standards for model year (MY) 2022-2025 light-duty vehicles and to coordinate its reconsideration with the parallel process to be undertaken by the DOT's NHTSA regarding Corporate Average Fuel Economy (CAFE) standards for cars and light trucks for the same model years. Signed by Administrator Pruitt; with DOT for Secretary Chao's signature and filing Federal Register notice. Announcement event with POTUS on March 15
House Energy and Commerce subcommittee hearing	<ul style="list-style-type: none"> EPA invited to send a witness re: proposed legislation to move back National Ambient Air Quality Standards implementation deadlines from 5 to 10 years. Historically, the Administrator would not attend a subcommittee hearing and as we do not have a confirmed AA for OAR, we recommend we decline the invitation.
Transmission of Great Lakes Progress Report	<ul style="list-style-type: none"> EPA is required to submit an annual progress report addressing the 5 focus areas in the Great Lakes Restoration Initiative Action Plan. This report, coordinated with OW, is provided by R5 for your signature and transmission to the President and Congress via OMB.
Spring 2017 Semiannual Regulatory Agenda	<ul style="list-style-type: none"> Ensure submissions reflect requirements in EO 13771: total incremental costs of any new significant regulatory actions issued between 1/20/17 – 9/30/17 be fully offset by 9/30/17 For any new significant regulatory action imposing costs and is issued on or before 9/30/17 is offset by 2 existing regulatory actions for elimination or proposed for elimination. All materials for spring 2017 due by March 31, 2017
MA NPDES Program	<ul style="list-style-type: none"> MA Governor seeks authorization to implement NPDES program *
WIIN Act requires EPA to work with homes/communities re: drinking water	<ul style="list-style-type: none"> EPA required to develop lead notification strategic plan by June 2016 that describes how the Administrator, states, and public water systems will work together to provide public education to populations affected by lead.

data above EPA's action level of 0.015 mg/L	EPA hosting first of several webinars on March 22
---	---

***State Program Authorization Information**

Authorization for states, tribes, and territories is through a process that is defined by Clean Water Act (CWA) Section 402 (b) and 40 CFR Part 123. Submission of the following items is needed in order to receive authorization to administer the NPDES program:

- a letter from the Governor requesting review and approval,
- a Memorandum of Agreement (MOA),
- a program description,
- a statement of legal authority (also known as an "Attorney General's Statement" or "AG Statement"), and
- the underlying state laws and regulations.

EPA determines whether the package is complete within 30 days of receipt. Within 90 days of receipt, EPA renders a decision to approve or disapprove the program. An extension for the review period is possible by an agreement.

The process of authorization includes a public review, comment period, and a public hearing. If EPA disapproves the program, EPA remains the permitting authority for that state, tribe, or territory.

To: Schnare, David[schnare.david@epa.gov]
From: Sarvadi, David G.
Sent: Tue 3/14/2017 8:16:33 PM
Subject: Background on the TSCA Issues
Legal Talking Points 4828-1439-5972 v.4.pdf

David,

This summarizes the TSCA issues we want to discuss. The American Chemistry Council has been talking to Jeff Morris, acting Office Director, about this, as well as with Ryan Jackson. We'll have a short discussion with the details about the products and business impacts, and then a proposal for the path forward.

See you tomorrow.

Cordially,
DGS
David G. Sarvadi
Attorney-at-Law
tel: 202-434-4249 fax 202-434-4646 | sarvadi@khlaw.com
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP's TSCA Team partners with CardnoChemRisk on the innovative TSCA 30/30, a webinar series on timely topics and issues affecting chemical regulation in the U.S.
www.khlaw.com/TSCA3030.

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that covers OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at www.khlaw.com

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure.

If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

Toxic Substances Control Act

Summary of New Chemical Issue

March 15, 2017

Background

- The Toxic Substances Control Act (TSCA) gives EPA authority to regulate manufacture – defined to include importation –, export, processing, distribution, use, and disposal of chemical substances; EPA can require testing and/or reporting, prohibit or limit the introduction and use of chemicals, and gather records to enforce the law; there is strict liability for civil penalties.
- All new chemicals – those not on the TSCA Chemical Substance Inventory – must be reviewed by EPA prior to manufacture; EPA can impose controls to prevent an unreasonable risk of injury to health or the environment.
- The primary focus for TSCA reform was to change section 6, where the threshold for regulating existing chemicals was quite high. In the 1991 *Corrosion Proof Fittings* case, the 5th Circuit vacated EPA's asbestos rule because EPA did not impose the “least burdensome” requirements. This led many to consider section 6 as too difficult to implement.

TSCA Reform and Its Impact on the New Chemicals Program

- EPA's new chemicals program has changed its policies regarding scrutiny of new chemicals. The statutory language and legislative history do not appear to support the changes, which have led to a dramatic change in the proportion of chemicals subject to testing requirements and consent orders, roughly from 20% prior to over 80% now. Congress did not change standard – “unreasonable risk.” The other changes made to section 5 were supposed to codify then-existing EPA practice and procedure – *i.e.*, no consideration of cost when reviewing risk; and consideration of potentially exposed or susceptible subpopulations, like workers and consumers.
- For premanufacture notices (PMN), EPA must make one of three possible determinations: (A) unreasonable risk, in which case it must take protective action; (B) insufficient information to evaluate risk, or substantial environmental releases or human exposure, in which case it must require testing and/or impose risk management measures via a “5(e)” order; or (C) no unreasonable risk and the substance can be manufactured without restriction. The decision must be published and manufacturing cannot begin unless and until EPA issues its decision. In contrast, prior to the change, manufacture could begin once the 90-day review period expired.
- EPA's New Chemicals Program appears to be applying (B) as a default if there is no hazard data, regardless of whether there is significant exposure. Congress rejected a requirement to have a “base set” of tests for new chemical substances. Risk is a hazard AND exposure assessment. Since June 22, 2016, EPA has only made no unreasonable risk (“C”) findings on ~35 PMN substances out of ~650 PMNs pending and submitted since June 22, 2016. The rest are under extensive review or consent order negotiations.

- EPA's New Chemicals Program is not considering exposure controls such as PPE and limited releases when issuing 5(e) orders for testing. The statutory language does not support this – the standard is still risk-based and EPA needs to consider both exposure and hazard. Nor does the legislative history – one of the primary compromises was the agreement not to impose a minimum data set for new chemicals.
- EPA's New Chemicals Program does not take into account in its initial risk assessment that protections identified in a safety data sheet (SDS), including personal protective equipment (PPE), are legally enforceable by OSHA, nor is it deferring to OSHA's authority over workplace exposures consistent with section 5(f) of TSCA, which directs EPA to consult with OSHA prior to imposing restrictions to address workplace exposures.
- In 1985, EPA adopted a Low Volume Exemption (LVE) for new chemicals, initially set at 1000 kg annual production and increased in 1995 to 10,000 kg/yr, which is based on EPA's rulemaking determination that sufficiently low exposure precludes a finding of unreasonable risk, except in rare cases where the substance may cause "significant" adverse health or environmental effects strictly defined in the rule. Other countries similarly exempt chemicals typically from all data requirements where production is below 1,000 kg/year, and have limited data requirements under 10,000 kg/year.
- An LVE is specific to a particular manufacturer with limited sites for use/production and under the conditions, practices and procedures described in the LVE; limited or no release; control over occupational exposures; no manufacture by others without notice; no changes without notice. EPA is not required to take any action on a LVE, and a manufacturer can begin production 30 days after EPA's receipt of the form unless EPA notifies the submitter otherwise. As a result LVEs require much less effort and activity for both EPA and the submitter.
- EPA is now categorically denying LVEs on chemicals that profile as persistent, bioaccumulative and toxic (PBTs) according to EPA's models criteria. These criteria are much more conservative than the "significant environmental risk" criteria in the LVE rule and ignore the exposure side of the equation. Hazards can be relatively high when exposure is extremely low and still meet the unreasonable risk standard.
- Another exemption applies to certain polymeric substances based on EPA's determination that substances that meet its terms and conditions categorically do not to present an unreasonable risk. However, in a situation where a manufacturer submits a PMN for a polymer that meets the criteria for the polymer exemption, EPA has imposed risk management measures based solely on hazard predictions based on its models. This is inconsistent with the determination underlying the polymer exemption. We do not know if this is routine, because manufacturers of such polymers, in our experience, do not routinely submit PE-qualified polymers under the PMN review process.

To: Schnare, David[schnare.david@epa.gov]
From: Brown, Byron
Sent: Wed 3/8/2017 4:56:36 PM
Subject: instruction on delegations and AO review

Hi David – it sounds like you sent something (maybe last week) about the need for programs and regional offices to coordinate with the AO before taking certain actions. Can you send that to me as an FYI. Thanks.

To: Schnare, David[schnare.david@epa.gov]
From: Connors, Sandra
Sent: Tue 3/14/2017 8:06:37 PM
Subject: Re: Hot topics

Will do. Working from home? Really hard to hear.

Sent from my iPhone

> On Mar 14, 2017, at 3:53 PM, Schnare, David <schnare.david@epa.gov> wrote:
>
> Please send me whatever you send Mike or Samantha
> thx
> d
>
> Sent from my iPhone

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Schnare, David[schnare.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]
Cc: Campbell, Ann[Campbell.Ann@epa.gov]
From: Dravis, Samantha
Sent: Mon 3/13/2017 8:32:25 PM
Subject: RE: Federal Register Notice requesting comments on candidates for peer review of lead modeling approaches

Sarah,

Please move this forward for submission to the OFR first thing tomorrow.

Thanks,

Samantha

From: Shapiro, Mike
Sent: Tuesday, March 7, 2017 5:42 PM
To: Schnare, David <schnare.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Federal Register Notice requesting comments on candidates for peer review of lead modeling approaches

Following up on our previous communications, and as noted in our report last week, I anticipate sending to the Office of Policy tomorrow, for publication in the Federal Register by March 17, the Federal Register Notice requesting comments on the interim list of candidates being considered as expert peer reviewers for the draft model report entitled, "Proposed Modeling Approaches for a Health-Based Benchmark for Lead in Drinking Water" (lead modeling report). This follows on EPA's published request for nominations of peer reviewers in the Federal Register on January 19, 2017. We are seeking comment and information about the expertise and qualifications of the candidates for 30 days. We received 26 nominees for consideration. In accordance with Agency guidance and contracting guidelines, a neutral third party contractor selected the 13 most qualified candidates from those nominated using the published criteria from the first FRN. I've listed the criteria below for ease of review.

I'm hoping to facilitate the timely review of the FRN. As indicated previously, this peer review is foundational work to support the revisions to the National Primary Drinking Water Regulation for Lead and Copper to improve public health protection by making changes to rule requirements under the Safe Drinking Water Act. Our current schedule anticipates proposing Lead and Copper Rule revisions in December 2017. In order to have the best available peer reviewed science to inform decision making, we will need to publish this FRN by March 17, 2017 seeking comment on peer review candidates.

I have attached both the FR Notice and the biosketches for the 13 candidates.

Thank you,

Mike

Criteria:

- (1) Demonstrated expertise through relevant peer reviewed publications;
- (2) professional accomplishments and recognition by professional societies;
- (3) demonstrated ability to work constructively and effectively in a committee setting;
- (4) absence of financial conflicts of interest;
- (5) no actual conflicts of interest or appearance of lack of impartiality;
- (6) willingness to commit adequate time for the thorough review of the draft report; and
- (7) availability to participate in-person in a one-day or two-day peer review meeting in the Washington, DC metro area, projected to occur in the summer of 2017

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Schnare, David[schnare.david@epa.gov]
From: Dravis, Samantha
Sent: Wed 3/1/2017 2:36:49 PM

David,

Could you bring the list of midnight rules (2copies) down to me and Byron in my office and we will discuss?

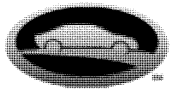
Thank you!

To: Schnare, David[schnare.david@epa.gov]
Cc: Konkus, John[konkus.john@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]
From: Hull, George
Sent: Fri 3/3/2017 11:53:16 PM
Subject: MTE Reconsideration Comms Materials
[MTE Reconsideration Comms Plan.docx](#)
[GHG Draft Release 3.2.17 \(003\).docx](#)
[MTE-Q-A-DRAFT 03-03-17.docx](#)
[CA1078111110.pdf](#)
[document_gw_13.pdf](#)
[Letter-to-EPA-Admin.-Pruitt-Feb.-21-2016-Signed.pdf](#)

David,

Please find attached the Draft Communications Plan, Press Release and Q+A documents for the joint EPA/DOT announcement of our intention to reconsider the Mid-Term Evaluation of Corporate Average Fuel Economy (CAFE) standards for light duty vehicles. Also attached are three letters from the auto sector to the President regarding their concerns with the existing CAFE standards. As you may note, the Administrator's quote in the press release will need some additional attention before we can make it final.

We would like to share these draft materials with the contacts you gave us in DOT's Public Affairs in order to coordinate for a Monday announcement. Please let us know if you have any concerns with our sending the documents, or if there are any additional edits/revisions you would like us to make before sharing with DOT. Thanks, George



AUTO ALLIANCE
DRIVING INNOVATION®

To: President-elect Donald J. Trump Transition Team
From: Mitch Bainwol, President and CEO
Date: November 10, 2016
Subject: **The Automobile Sector -- Forging Public Policy for Even Safer, Cleaner and More Transformative Mobility**

INTRODUCTION

These are heady times for the auto industry and mobility in the U.S. New vehicle sales are strong, employment is growing, safety technologies are now making it possible to prevent crashes instead of just surviving them, research is ambitious and consequential, and technological innovations are re-defining mobility as we know it. We have a keen understanding that what we do – build vehicles that move America (and the world) – is critical to public safety, ensures there is a growing economy and also helps to better protect our environment. Now more than ever, sound public policy for the automotive industry is essential not only for our sector's continued success but for this country's economic growth.

Sound public policy provides certainty so businesses can plan; it mitigates chaos so that rules are clear and fair and equitably enforced; it relies on a commitment to established regulatory practices like rigorous cost/benefit analysis; it provides timely and harmonized government responses both within agencies and between agencies; and it recognizes the importance of vehicle affordability for consumers as well as the corresponding efficiency and safety benefit to the traveling public.

It's in that spirit that we reach out to your Transition Team. This memorandum has two sections. The first outlines the **context** for our industry as we head into 2017. The second offers some policy **recommendations** for the Transition team to consider as you reflect on next year.

CONTEXT

GROWTH

2015 marked an unprecedented sixth year of sales growth and an all-time record for new vehicles sales (17.5 million). 2016 could - potentially - be the seventh year of increased sales. The combination of an aging fleet (average age of a car is now 11.5 years old), coupled with attractive

incentives from manufacturers, low interest rates and longer financing terms has generated the strength of this recovery. Yet we are a cyclical industry. Accordingly, we do not view growth as an entitlement. Sustainable growth requires the development of compelling product on our part, favorable economic conditions (including healthy disposable income, readily available and inexpensive financing) and a regulatory framework that is securely grounded in common sense at both the state and federal level.

PLANTS

Since 2008, four new manufacturing plants have been launched in the U.S. and there has been substantial, multi-billion-dollar reinvestment in existing plants. New plants are located in: Greensburg, IN (Honda), West Point, GA (Kia), Blue Springs, MS (Toyota), and Chattanooga, TN (Volkswagen). Also, Volvo is slated to open its new plant in South Carolina in 2018. More broadly, over the last decade (including 2005), six manufacturing plants opened in the U.S. while one plant opened in Canada and five plants opened in Mexico. Given our highly competitive industry, plant location choices reflect trade rules, sales patterns, port and infrastructure access, and cost structure.

PRODUCT

Americans view automobiles manufactured today as significantly improved relative to a decade ago, according to the Auto Index national tracking poll conducted monthly by the Alliance. Ratings (better vs. worse) for quality (79-12), technology (93-2), safety (85-7) and fuel economy (88-3) all are up profoundly. Especially in a low gas-price context, the types of vehicles that Americans buy continues to evolve, reflecting functional lifestyle needs. As you can see below, over the past fifteen years, CUVs (Crossovers) have picked up market share from each of the other segments, with traditional passenger cars now accounting for just over 40% of new vehicle purchases.

Year	2015	2010	2005	2000
Car	43.3	48.7	45.2	50.6
CUV	30.0	24.5	12.9	3.5
Pickup	14.2	13.9	18.8	18.3
SUV	7.2	6.9	14.5	17.2
Van	5.3	5.9	8.7	10.3

For more information about the automotive industry, please visit: www.autoalliance.org/



SAFETY

From the 1970's through 2014, fatalities on the road as a share of vehicle miles traveled (VMT) fell dramatically. Viewed through the lens of a longer vantage point - the half century dating from the passage of the National Traffic and Motor Vehicle Safety Act in 1966 through 2014 - fatalities as a share of miles travelled are down about 80 percent. Yet far too many individuals are losing their lives on our roadways (35,092 in 2015). As NHTSA notes, 94% of all crashes are attributable to driver choices and human error, including impaired driving, lack of seat belt use, speeding, and distraction. Vehicle defects are a factor in less than 1% of these fatalities and our industry is working to reduce that number even more. A bright spot is the rapidly emerging technologies that mitigate human error and help save lives by preventing crashes from happening.

Still, and unfortunately, in 2015 fatalities rose 7.2%. It will take additional time for the Department of Transportation and other stakeholders to determine why this occurred. Increased VMT explains part of the rise, but that still leaves a significant part resulting from other causes, including distraction on the part of both drivers and pedestrians and potentially higher bicycle and motorcycle fatalities. Our preliminary look at the data suggests the vehicle factor share is unchanged at under 1%.

ENVIRONMENTAL

Smog-forming pollutants have been virtually eliminated from passenger cars, down over 99% since the 1960s. We are now complying with policies designed to mitigate the last 1% of these pollutants. Meanwhile, cars are far more efficient than they were even a decade ago as automakers down-weight and deploy new technologies to reduce carbon emissions. The increases in fuel economy have occurred in recent years even as the combination of low gas prices and higher conventional engine efficiency has resulted in declining market share of alternative powertrain vehicles and, as noted, growing market share of light trucks versus cars.

	2005	2012	2013	2014	2015
Adjusted Fuel Economy (MPG)	19.9	23.7	24.3	24.3	24.7 (p)
Hybrids	205,828	427,676	498,054	452,507	378,402
Hybrid %	1.21%	2.96%	3.21%	2.75%	2.18%
Plug-in Hybrid	0	38,585	48,957	55,441	43,458
Plug-in Hybrid %	0.00%	0.27%	0.32%	0.34%	0.25%
Electric	0	13,941	47,595	64,772	70,823
Electric %	0.00%	0.10%	0.31%	0.39%	0.41%
Alt Total	205,828	480,202	594,616	572,722	492,683
Total	16,947,754	14,439,684	15,531,706	16,435,286	17,386,331
Percent All Volume	1.21%	3.33%	3.83%	3.48%	2.83%

Source: Wards Auto/ EPA Trends Report for Adjusted Fuel Economy

INNOVATION

We are in the midst of an incredibly dynamic time in the history of our industry. Change and disruption is rapid; new players are entering our sector; new business collaborations are being established; and new models of mobility are emerging.

The future holds vast and diverse opportunities. We know there will be more ride sharing entrants and programs and that the traditional models of vehicle ownership are evolving. We know that new cars will take over more and more of the driving duties, ultimately achieving full autonomy, but that a majority of the fleet will not be self-driving for more than a generation. We know that technology, while not perfect, offers the promise of reducing crashes, injuries and fatalities on American roadways. With wider deployment of crash avoidance technologies, we will achieve a range of other social objectives including reduced fuel consumption, lower carbon emissions and higher productivity rates. Autonomy is destined not only for automobiles but also for large trucks and buses. And long term, autonomy will present far-reaching implications for everything from urban land use to public transportation and infrastructure requirements.

Due to the rapid change that is occurring in the auto sector, our industry has proactively established an Automotive Information Sharing and Analysis Center (Auto-ISAC) to facilitate the exchange of important cyber threat information – and countermeasures – in real time. In addition, the Alliance and our members established the consumer data Privacy Principles that apply to the collection, use, and sharing of covered information in association with vehicle technology and services available on cars and light trucks sold or leased to individual consumers for personal use in the United States.

As current NHTSA Administrator Mark Rosekind often notes, the pace of technological change in safety has far outstripped the pace of regulatory action. That's not an indictment of the agency. Rather, it is reflection of rapid global innovation, much of it in the U.S., fueled by marketplace competition to achieve safety, social, environmental and other outcomes never before imagined.

The current Administration deserves credit for working to promote the adoption of semi-autonomous and fully autonomous technologies. The Secretary and NHTSA Administrator both understand that the benefits to society are so profound that it is vital to take an approach that maximizes the deployment rate in order to maximize safety. And both recognize that the traditional regulatory approach is less than ideal.



RECOMMENDATIONS

As the Trump Administration prepares to take office in late January, we are pleased to offer the following recommendations to consider as you develop your agenda, especially for the first 100 days.

I Harmonize and Adjust Fuel Economy and GHG Emission Standards:

The Corporate Average Fuel Economy (CAFE) and Greenhouse Gas (GHG) Emission Standards that were adopted in 2012 by the EPA, NHTSA, and the California Air Resources Board (CARB) via a Joint Final Rule pose a substantial challenge to the auto sector due to the steeper compliance requirements for Model Years (MY) 2017-2025. As part of the Mid-Term Review process that kicked off this summer with release of the Draft Technical Assessment Report (TAR), the EPA, NHTSA, CARB and the auto sector are in the process of re-evaluating the assumptions that shaped those original standards. Automakers have outlined concerns that call into question the viability of the modeling used in the draft TAR. In short, we believe the TAR over-projects technology efficiencies and inadequately accounts for consumer acceptance and marketplace realities. These market factors are absolutely critical since automakers are ultimately judged by what consumers take out of showrooms across America, rather than what automakers put into those showrooms. The combination of low gas prices and the existing fuel efficiency gains from the early years of the program is undercutting consumer willingness to buy the vehicles with more expensive alternative powertrains that are necessary for the sector to comply with the more stringent standards in out-years.

When the EPA, NHTSA and CARB established the 2012 Joint Final Rule creating “One National Program,” one primary aspect was to “harmonize” the three sets of fuel economy regulations at the federal and state level as fully as possible to provide greater consistency and certainty for automakers as they develop their products for sale across the U.S. The Administration’s 2012 Regulatory Announcement highlighted the value of harmonization: *“Continuing the National Program ensures that auto manufacturers can build a single fleet of U.S. vehicles that satisfy requirements of both federal programs as well as California’s program.”*

But significant inconsistencies continue to exist.

Since 2012, it has become increasingly clear that many automakers may be in compliance with the EPA program, yet subject to fines in the NHTSA program. This regulatory friction is already occurring, driving up vehicle costs, and will become even more counterproductive as the regulatory requirements become more stringent in future Model Years. Potentially billions of dollars in fines under the NHTSA CAFE program are anticipated.

We recommend that the White House lead efforts with EPA, NHTSA, CARB and the automakers on finding a pathway forward regarding the standards for 2022 MY and beyond prior to publishing the NPRM and preliminary determination.



We also recommend that the Trump Administration support the administrative and legislative reforms necessary to achieve harmonization. This includes approving the petition that the Auto Alliance filed with EPA and NHTSA on June 20, 2016 regarding certain harmonization gaps that exist that can be addressed administratively.

II Include Zero Emission Vehicle (ZEV) Mandate Cost in Mid-Term Review:

Under a waiver granted by EPA, California’s ZEV requirement (followed by nine other states), forces GHG-reducing solutions (heavy electrification) into the market rather than allowing the “technology-agnostic” approach that EPA and NHTSA relied upon in the One National Program. This additive ZEV requirement grows to over 15% of vehicle sales by 2025 in the ten states that together account for roughly one-third of all light-duty vehicle sales in the United States. The benefits of the ZEV program are factored into the Draft Technical Assessment Report, but the costs of the ZEV program are ignored.

And while EPA argues that substantial electrification is not required for compliance with the federal program, that point is academic if it is separately required for the ten relevant states.

We recommend that the cost of the ZEV mandate be factored into the Mid-Term Review due to the much more expensive compliance pathway that will increase costs for consumers nationally.

In addition, the 9 states that have adopted the California ZEV requirements have not provided comparable and needed incentives for consumers to be willing to purchase the highly electrified vehicles in their markets. This is leading to dramatically different consumer acceptance of electrified products in the Northeast states compared to California. The Administration should engage as appropriate to help address these ZEV issues – especially to help avoid the creation of a patchwork of requirements that will frustrate the overall intent of the “One National Program”.

III Regulatory and Organizational Reforms are Critical:

The number of government regulators (state and federal) who are interested in or currently oversee the automobile sector (U.S. DOT, NHTSA, FCC, FTC, DHS, NTIA, U.S. Department of Commerce, CFPB, EPA and California ARB) continues to grow. A robust examination of the combined impact of such uncoordinated regulatory oversight on the auto industry and the American consumer is warranted. As car prices rise, it becomes vital to look at the full cost of regulatory initiatives. Well-meaning regulatory action risks increasing compliance costs to the point that additional safety and fuel-efficiency technologies put new vehicles out of financial reach of the average new car purchaser.



To maximize affordability for all Americans, it therefore makes sense to assess a range of ideas that can lead to even more thoughtful regulatory approaches, including:

- **Comprehensive Regulatory Review.** Undertake a comprehensive review of all regulations (final and proposed), interpretations of regulations, guidance, information disseminations, information collections, that were promulgated or issued since September 1, 2016 to ensure that these are consistent with the policy objectives of the new administration.
- **Ensure that the EPA does not issue any Proposed Determination on whether the Model Year 2022-2025 Greenhouse Gas Light Duty Vehicle standards are appropriate under section 202(a) of the Clean Air Act.**
- **Establish a New OMB Requirement for “Whole Car Cost Analysis.”** To ensure that the overall health and vitality of the auto sector is not jeopardized by the cumulative costs of new vehicle regulations/policies, agency proposals for new car requirements should be accompanied by a *Whole Car Cost Impact Statement* that aggregates compliance expenses.
- **Impose a “Shot Clock” for Agency Responses to Industry Submissions/Petitions.** To encourage prompt responses to requests for regulatory actions, and prevent federal agencies and departments from sitting on such waivers and petitions that may help spur additional innovation, the timelines established in statute must be made meaningful and binding.
- **Revise OMB Guidance for Federal Agencies and Departments.** OMB ought to establish clear thresholds regarding the use of non-regulatory guidance to ensure that quasi-regulatory efforts do not circumvent the traditional rulemaking process.
- **Establish a Presidential Advisory Committee to Coordinate Auto Sector Regulators.** Such an advisory committee would help reduce regulatory friction and confusion among federal agencies and departments and could potentially result in recommendations for a new paradigm for vehicle regulation. The committee also could identify opportunities to streamline and improve the efficiency of multiple federal and state agencies by eliminating duplication of effort and more efficiently allocating responsibilities by agency area of expertise.

IV Autonomous Vehicles:

We will be filing soon a detailed response to the recent Administration proposal regarding autonomous vehicles. Our technical experts are busy at work evaluating that proposal and formulating our reaction. We will share it with you upon its submission. But the test of policy at



a conceptual level should be: how do we save the most lives by promoting the rapid deployment of these technologies while also maximizing public safety and building public support for their adoption?

SUMMARY

The future of mobility is bright and offers the long-term promise of great manufacturing jobs and mobility that increases national productivity while generating significantly improved safety and environmental outcomes. We live at a moment where technology and change are swamping the regulatory capacity to manage our emerging reality. Reform is imperative.

The question at the end of the day is what kind of reform? There will be those who argue against change and for a traditional regulatory paradigm that in effect slows down the march of technology. And there may be those who argue that public policy should stay out of the way. Neither of these choices is our view. We believe that to maximize consumer acceptance of new mobility patterns and opportunities, the public and private sectors must work in a more coordinated and cooperative fashion. It is in that spirit, and with a commitment to keeping cars safe, clean and affordable for Americans, that we offer these recommendations and our pledge to work with you to achieve the great social outcomes that are within grasp.

CONTACT:

press@epa.gov

FOR IMMEDIATE RELEASE

March 6, 2017

President Trump Directs EPA, DOT to Reexamine GHG Standards for Cars and Light Trucks

WASHINGTON — Today, Department of Transportation Secretary (DOT), Elaine Chao, and U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt, committed to reexamine model year 2022-2025 fuel economy and greenhouse gas standards for cars and trucks to determine if they are achievable and affordable.

[Place Holder Quote for DOT]

“Process matters,” said EPA Administrator Scott Pruitt. “We will work with our partners at DOT to take a fresh look at these standards, while providing the time and opportunity needed to fully evaluate them. Affordable, achievable standards are good for consumers, the economy, and the environment.”

The Midterm Evaluation process was established as a part of the 2012 final greenhouse gas emissions standards for model years 2017-2025, requiring EPA to determine no later than April 1, 2018, whether the standards established are appropriate. The action the agency is taking today will ensure that deadline is met after a thorough, open and transparent evaluation with adequate time for public review and input. If the agency believes that the final determination issued by the previous administration was made in error, it would submit a new proposal for public review and comment before finalizing any changes to the standards.

Midterm Evaluation Process: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/midterm-evaluation-light-duty-vehicle-greenhouse-gas-ghg>



February 21, 2017

G. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, D.C. 20460

RE: Final Determination on the Appropriateness of the Model Year 2022-2025
Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm
Evaluation

Dear Administrator Pruitt,

I write on behalf of the Alliance of Automobile Manufacturers (Alliance), an association representing twelve leading manufacturers of cars and light trucks,¹ to request that the U.S. Environmental Protection Agency (EPA) withdraw the Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation (Final Determination) which was announced on January 13, 2017 but never published in the *Federal Register*.

For the auto industry, the Final Determination may be the single most important decision that EPA has made in recent history. The Alliance requests that EPA withdraw the Final Determination and resume the Midterm Evaluation, in accordance with its original timetable, to remedy the severe procedural and substantive defects that have infected the process to date. We explain, in more detail below, EPA's authority to withdraw the Final Determination and why that withdrawal is appropriate and essential.

1. EPA Should Exercise Its Authority to Withdraw the Final Determination

As you know, on January 20, the White House issued a memorandum to the heads of all executive departments and agencies instituting a freeze on regulatory activity, pending review by the Office of Management and Budget (OMB) Director.² The Alliance urges EPA to withdraw the Final Determination on its own initiative in accordance with the regulatory freeze. Irrespective of whether EPA considers the Final Determination a rule or an adjudication, the Final Determination should be reviewed

¹ Alliance members are BMW Group, FCA US LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Car USA.

² See Memorandum for the Heads of Executive Departments and Agencies, Jan. 20, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/20/memorandum-heads-executive-departments-and-agencies>.

and withdrawn. As the Alliance has noted, a wealth of precedents confirm that the Final Determination is a rule, and all rules not yet published in the *Federal Register* are subject to the regulatory freeze.³ Even if EPA continues to construe the Final Determination as an adjudication, however, it is still subject to the regulatory freeze as an “agency statement of general applicability and future effect ‘that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.’” The Final Determination reaffirms and reinstates industry-wide greenhouse gas emissions standards for all light vehicles sold in America for MY 2022-2025, and thereby establishes a policy on a regulatory issue of central importance to the auto industry.

Furthermore, EPA has ample authority to withdraw the Final Determination on its own initiative, irrespective of whether EPA considers it a rule or an adjudication. If the Final Determination is a rule, it is clearly a nonfinal one, because it has not been published in the *Federal Register*. See 5 U.S.C. § 553(d); *Kennecott Utah Copper Corp. v. U.S. Dep’t of Interior*, 88 F.3d 1191, 1209 (D.C. Cir. 1996). And, as a nonfinal rule, EPA can readily withdraw the Final Determination without engaging in notice-and-comment rulemaking. *Kennecott*, 88 F.3d at 1206.

Even if EPA continues to endorse the view that the Final Determination is an adjudication, however, EPA has broad inherent power to reconsider its decision “within the period available for taking an appeal.” *Am. Methyl Corp. v. EPA*, 749 F.2d 826, 835 (D.C. Cir. 1984). Agencies have long exercised this power to fix determinations like this one that suffer from “serious procedural and substantive deficiencies.” *Belville Min. Co. v. United States*, 999 F.2d 989, 998 (6th Cir. 1993). Regardless of how EPA classifies the Final Determination, EPA should promptly withdraw it in light of the many procedural and substantive flaws described below.

2. EPA Has Abrogated Its Commitment to a Robust Midterm Evaluation

As the Supreme Court has recognized, EPA’s regulatory efforts to address greenhouse gases have already produced “the single largest expansion in the scope of the [Clean Air Act] in its history.”⁴ In 2009, EPA issued an Endangerment Finding that motor vehicle greenhouse gas emissions contribute to climate change and thereby threaten public health and welfare. Thereafter, EPA and the National Highway Traffic Safety Administration (NHTSA) began jointly setting greenhouse gas emissions and fuel economy standards for new light-duty motor vehicles, starting with Model Year (MY) 2012-2016. Then, in 2012, EPA and NHTSA took the unprecedented step of

³ See Alliance Comments on Proposed Determination on Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation at 11-13, Dec. 30, 2016, Docket ID No. EPA-HQ-OAR-2015-0827; Memorandum for the Heads of Executive Departments and Agencies, Jan. 20, 2017.

⁴ *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2436 (2014) (internal quotation marks omitted).

setting joint greenhouse gas and fuel economy standards over a decade in advance for MY 2022-2025 vehicles. 77 Fed. Reg. 62,628 (Oct. 15, 2012). No agency ever had set emissions standards so far into the future, and all stakeholders understood that no one could accurately project the circumstances affecting the technological and economic feasibility of these standards.

The Alliance supported these efforts—but only on the condition that EPA and NHTSA would reassess standards as data became available to test their feasibility. That commitment was essential because of the great uncertainty regarding the feasibility of the future standards. Based on the projections in the 2012 rule, manufacturers must achieve an average 54.5 miles per gallon equivalent across their new vehicle fleets by 2025. Even today, no conventional vehicle today meets that target, and conventional vehicles comprise 96.5% of the new light-duty vehicle fleet. Only some non-conventional vehicles (i.e., hybrid, plug-in electric, and fuel-cell vehicles), which comprise fewer than 3.5% of today’s new vehicles, currently can do so.⁵ Even under EPA’s optimistic estimates, the automotive industry will have to spend a staggering \$200 billion between 2012 and 2025 to comply, making these standards many times more expensive than the Clean Power Plan.⁶

EPA and NHTSA committed to a robust Midterm Evaluation that would take a fresh look at these standards by April 2018. The agencies promised that this review would be collaborative, so that the industry could offer the agencies real-life data to adjust their model-driven forecasts. The agencies also committed to developing greenhouse gas emissions standards and fuel economy standards in tandem.⁷ And they repeatedly represented that they would not complete the Proposed Determination/Notice of Proposed Rulemaking until mid-2017 at the earliest.⁸ The industry took the agencies at their word, commissioning complex studies critical to assessing the MY 2022-2025 standards and the processes used by EPA in its analysis, that we had expected to add to the administrative record for the Midterm Evaluation in 2017.

On November 30, 2016, EPA abruptly abrogated these commitments. EPA issued a Proposed Determination that the MY 2022-2025 standards should go into force

⁵ “Light-Duty Automotive Technology, Carbon Dioxide Emissions, and Fuel Economy Trends: 1975 through 2016,” at 118. U.S. Environmental Protection Agency. EPA-420-R-16-010, Nov. 2016.

⁶ See EPA Regulatory Impact Analysis for 2012-2016 rule (EPA-420-R-10-009, Apr. 2010) at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-model-year-2012-2016-light-duty-vehicle>; EPA Regulatory Impact Analysis for 2017-2025 rule (EPA-420-R-12-016, Aug. 2012) at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-model-year-2017-and-later-light-duty-vehicle>.

⁷ See 40 C.F.R. § 86.1818-12(h), 77 Fed. Reg. 62,784 (Oct. 15, 2012), 40 C.F.R. § 86.1818-12(h)(1)-(2); 81 Fed. Reg. 49,219 (July 27, 2016).

⁸ See Alliance Comments on Proposed Determination at 10, Dec. 30, 2016, Docket ID No. EPA-HQ-OAR-2015-0827.

without modification. EPA issued the Proposed Determination without coordinating with NHTSA. EPA demanded comments by December 30, 2016, even though the Proposed Determination was not published in the *Federal Register* until December 6. The public and industry had a mere 24 days, spanning a major national holiday, to comment on nearly 1,000 pages of documents, plus additional cited documents and computer modeling, regarding requirements that will profoundly affect the automobile industry and the more than 900,000 American workers it directly employs.⁹ After EPA denied requests by various stakeholders to extend the abbreviated comment period, we did our best to file substantive comments. EPA received more than 100,000 public comments, including 63 sets of comments from various organizations spanning hundreds of pages.¹⁰ Many objected that the comment period was inadequate. EPA denied all requests to extend the abbreviated comment period and yet EPA issued the Final Determination on January 13, 2017, just 14 days after the comment period closed. EPA brushed aside objections to its procedural shortcuts and never justified the need for such an abbreviated comment period. EPA also rejected commenters' substantive and technical concerns by resting on its earlier analysis.

3. EPA Should Withdraw the Final Determination Immediately

The Final Determination is the product of egregious procedural and substantive defects and EPA should withdraw it.¹¹ In EPA's rush to promulgate the Final Determination before the new administration took office, EPA bypassed required procedures, failing for instance to provide an adequate period for meaningful notice and comment. The Final Determination asserts that there was no need for more time because the Proposed Determination did not include much new material. But that contention is belied by EPA's acknowledgement that the Proposed Determination adjusted a number of EPA assumptions in response to commenters who pointed out errors at earlier stages. The industry also had an unacceptably short period to try to ascertain why EPA rejected many of its objections.¹² These procedural defects are significant irrespective of whether the Final Determination constitutes rulemaking or adjudication.

EPA's unilateral announcement of its Final Determination also constitutes a failure to harmonize its greenhouse gas emissions standards with NHTSA's fuel-economy standards, contrary to the letter and intent of EPA's own regulations. NHTSA has not yet reached a determination on its fuel economy standards and continues its

⁹ U.S. Department of Labor, Bureau of Labor Statistics, 2015, U.S. Vehicle and Equipment Manufacturing Employment equaled 909,700 people.

¹⁰ Final Determination, Response to Comments at 1-3.

¹¹ See Alliance Comments on Proposed Determination, Dec. 30, 2016, Docket ID No. EPA-HQ-OAR-2015-0827.

¹² See Final Determination, Response to Comments at 7.

Midterm Evaluation rulemaking activities. EPA's failure to act in coordination with NHTSA also casts serious doubt on the legitimacy of EPA's data and conclusions, given the substantial discrepancies between EPA's and NHTSA's analysis of the technologies and costs associated with the MY 2022-2025 standards.¹³

Furthermore, EPA's Final Determination that the MY 2022-2025 greenhouse gas standards should remain unchanged, is riddled with indefensible assumptions, inadequate analysis, and a failure to engage with contrary evidence. Here are just a few examples:

- EPA estimated that these standards will cost the industry at least \$200 billion. But EPA underestimated the burden. Contrary to EPA's assumptions, manufacturers will have to rely on much more expensive electrified technologies (i.e., hybrids and plug-ins), driving up vehicle prices and depressing auto sales.
- EPA refused to conduct an analysis of consumer acceptance and technology affordability needed for compliance, claiming this was too difficult.
- EPA refused to analyze substantively the economic impact of the MY 2022-2025 standards, instead making cursory assertions that downplayed the impact of its mandate on auto sales and employment.
- EPA refused to consider many of the Alliance's technical concerns even when supported by an outside consultant¹⁴, asserted the Alliance provided insufficient data, and then refused further meetings for clarification.

4. Studies and Data Highly Relevant to the Midterm Evaluation Have Not Been Submitted to EPA Because They Still Are Pending

It is particularly critical that EPA withdraw the current Final Determination and reopen the Midterm Evaluation process because analysis commissioned according to EPA's original timetable is ongoing and the Alliance expects that new information relevant to the Final Determination's underlying assumptions and resulting analysis will soon emerge. EPA's rushed timetable, coupled with its about-face on the timing of the Midterm Evaluation, prevented consideration of this information.

¹³ See Alliance Comments on US EPA, US DOT, California's Air Resources Board Draft Technical Assessment Report of Greenhouse Gas Emissions and Fuel Economy Standards for Model Year 2022-2025 Cars and Light Trucks at ES-9, Sept. 26, 2016, Docket ID No. EPA-HQ-OAR-2015-0827, NHTSA's costs are approximately 42% higher than EPA's (NHTSA Table ES-2 v. EPA ES-4 Table ES-1).

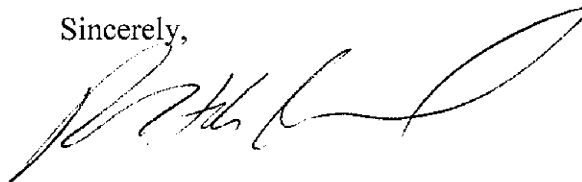
¹⁴ See Novation Analytics Comments on Draft Technical Assessment, Sept. 26, 2016; Docket ID No. EPA-HQ-OAR-2015-0827.

We urge EPA to reconsider imposing such a far-reaching mandate on an entire industry without adequately considering the consequences, and without giving stakeholders a meaningful opportunity to comment. The MY 2022-2025 standards threaten to depress an industry that can ill afford spiraling regulatory costs. If left unchanged, those standards could cause up to *1.1 million* Americans to lose jobs due to lost vehicle sales.¹⁵ And low-income households would be hit the hardest.¹⁶

The Alliance is not asking EPA to make a different Final Determination at this time. All we are asking is that EPA withdraw the Final Determination and resume the Midterm Evaluation, in conjunction with NHTSA, consistent with the timetable embodied in EPA's own regulations. We believe that, if carried out as intended, the Midterm Evaluation can lead to an outcome that makes sense for all affected stakeholders and for society as a whole.

The Alliance welcomes the opportunity for further dialogue about ways to rekindle the industry's longstanding cooperation with EPA on these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mitch Bainwol', with a large, sweeping loop at the end.

Mitch Bainwol
President and CEO

Cc: Secretary Elaine Chao, DOT
Kevin Green, DOT
Bill Charmley, EPA
Chris Grundler, EPA
Michael Olechiw EPA
Rebecca Yoon, NHTSA
James Tamm, NHTSA
Mike McCarthy, CARB
Annette Hebert, CARB

¹⁵ McAlinden, Sean, et al., *The Potential Effects of the 2017-2025 EPA/NHTSA GHG/Fuel Economy Mandates on the U.S. Economy*, Center for Automotive Research (Sep. 2016) at 49. Referring to the \$3.00 per gallon gasoline price \$6,000 technology cost scenario.

¹⁶ Walton, Tom, et al., *The Impact of Future Fuel Economy Standards on Low Income Households*, Defour Group LLC (Sep. 2016); Walton, Tom, et al., *Defour Group Response to EPA Rejoinders to Defour Group / Alliance of Automobile Manufacturers Submission Regarding the Regressivity/Affordability of EPA's Proposed Fuel Economy Standards*, (Dec. 2016).

Joint EPA/DOT Announcement of Intention to Reconsider Mid-Term Evaluation of Corporate Average Fuel Economy (CAFE) standards for Light Duty Vehicles:

Top line talking points:

- The Environmental Protection Agency today delivered a major win for American automobile manufacturers and American workers and consumers by deciding to reexamine an Obama Administration rule that could have required the automobile industry to achieve 54.5 miles per gallon by 2025, a standard manufacturers said would be difficult and costly to achieve.¹
- The Obama era CAFE standards were expensive. It is estimated by the auto industry that it would need to spend \$200 billion to comply.²
- The Obama era CAFE standards cost American jobs. The National Center for Policy Analysis says these standards pushed manufacturing and jobs to Mexico.³
- EPA has a 2018 deadline to provide a “midterm review” of these standards, and is committed to ensuring that deadline is met.
- The Department of Transportation - National Highway Traffic Safety Administration working hand-in-glove with the EPA will take a fresh look at these fuel economy standards to determine if the existing rules are good enough or need to be altered.
- Realistic CAFE standards are good for consumers and the environment.

1: <http://www.autonews.com/article/20161110/OEM11/161119989/automakers-reach-out-to-trump-on-regulation-seek-review-of-fuel>

2: <https://www.forbes.com/sites/davidkiley5/2016/11/30/obamas-epa-moves-to-firm-up-fuel-economy-regs-before-trump-takes-office/#7560892cc482>

3:: <http://retirementblog.ncpa.org/cafe-standards-distort-auto-production-and-push-jobs-south/#sthash.4PmummPG.dpbs>

Actions the EPA will take:

Distribute Joint EPA and DOT announcement that the agencies intend to reconsider the Mid-term Evaluation (MTE) of the Corporate Average Fuel Economy (CAFE) standards for light duty vehicles.

Communications Actions:

- Joint EPA/DOT Press Release sent out by both agencies on Monday, March 6, 2017. Target time for release: 12 Noon.
- Prepare Q+A document for use in responding to press inquiries
- Outreach and notification to select auto sector stakeholders to immediately follow Press Release.

Stakeholders include:

- The Alliance of Automobile Manufacturers
 - Association of Global Automakers
 - Motor Equipment Manufacturers Association
 - United Auto Workers
-
- Update EPA’s MTE website and post pre-publication version of Federal Register Notice on this action
 - Develop and post social media related to announcement
 - Set aside the bulk of the day to arrange for media interviews for the Administrator.
 - Monitor Governor’s statements following announcement

- Monitor press coverage of announcement
- Coordinate press availability and photo spray of Administrator signing the Reconsideration document.
- Coordinate with third party organizations to help them develop their own actions to help push the message via press release, membership alerts, social media, etc.
- Coordinate with third party organizations to develop a “what they are saying” document of quotes celebrating the action for social media posting and media alerts.

Midterm Evaluation of Light-Duty Vehicle GHG Standards for Model Years 2022-2025

Q-A

1. Question: What are the next steps after this action?

Answer: The agency will complete the mid-term evaluation by April 2018, as originally established in the standards finalized in 2012.

2. Question: Will EPA and DOT continue to coordinate to ensure the close coordination of the GHG and CAFE program?

Answer: Yes. EPA and NHTSA will continue to coordinate our respective authorities for the auto sector. Joint agency actions are not appropriate during the current phase of the process, when the agencies will be taking separate steps as required by our respective statutes and regulations. However, each of the agencies will continue to communicate with the other regarding future actions.

EPA will continue to coordinate with NHTSA on efforts to harmonize the two programs, and will of course coordinate with NHTSA on petitions that have been presented to the agencies.

3. Question: What was State of California's role in the Midterm Evaluation?

Answer: As laid out in the 2012 final rule, the California Air Resources Board (CARB) was a full partner with EPA and NHTSA in the technical analyses of the Draft TAR. EPA continued to communicate with CARB during the development of Proposed Determination; however, the Proposed Determination is a uniquely EPA action. As the Administrator is making a final determination that is consistent with her proposed determination, the national program that aligns EPA and California's LDV standards remains in place.

4. Question: Will low oil prices make compliance more difficult?

Answer: No. While lower oil prices may lead to higher truck market share and larger vehicles within both the car and truck classes, the standards are established for each vehicle size category and not as a single target. Larger vehicles have higher GHG and lower fuel economy targets than smaller vehicles. In other words, the program is "self-adjusting," and if a manufacturer sells a mix with more vehicles that are larger, then their overall fleet wide standard will be less stringent than if they sell a mix with more vehicles that are smaller. The standards are designed so that the "degree of difficulty" will be similar across vehicle size. For this reason, lower oil prices should not make it any harder for automakers to comply.

5. Question: Do lower oil prices mean EVs and hybrids will be harder to sell?

Answer: Our analysis continues to project that only modest penetration rates of electrification technologies are necessary in order for the standards to be met through 2025. Additionally,

while oil prices could influence sales volumes, there are other market factors that may promote sales of these technologies. Hybrid and plug-in technologies are improving and most manufacturers are investing heavily in both technologies, and EPA expects that they will continue to increase market share and play an increasingly important role in meeting post-2025 standards.

6. **Question: With vehicle sales shifting from passenger cars to light trucks, why didn't EPA re-model the overall benefits of this program using updated projections? Is it true that the program will no longer deliver 6 billion tons of emissions reductions? What does this projection mean for the Administration's climate goals outlined in the Paris agreement? Will this allow us to get to the 26-28% emission reductions needed?**

Answer: The MTE process is not focused on recalculating the overall benefits of the GHG standards. The goals instead were to develop technical information about the availability and types of technology needed to achieve the MY 2022-2025 standards, and to establish a strong analytical basis for the Administrator to assess whether the MY2022-2025 standards should stay the same or be adjusted. The analysis did just that. Nevertheless, we anticipate the long-term benefits will be within the range of the 6 billion tons of emission reductions EPA projected in the original 2012 final rule.

To: Pruitt, Scott[Pruitt.Scott@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]
From: Richard Kinch
Sent: Wed 4/26/2017 6:55:48 PM
Subject: Ex-EPA'er - A Different Perspective

As with many ex-EPA employees, I was asked to sign a climate change letter. Respectfully, there are multiple reasons why I would not sign:

- I do not find the approach of “we are right, your thoughts have no validity” as being helpful to a meaningful dialogue.
- Based on my experience of 40+ years at EPA, there are uncertainties and mutual respect is necessary for a fruitful dialogue.
- Like the vast majority of those signing the letter, I have not developed climate change models and thus have limited expertise. I prefer stating my own position, which admittedly reflects my limited expertise in the intricacies of climate change, rather than sign on to someone else’s position.

As for my position on the climate change issue, I have one big picture observation that could enhance the dialogue:

There appears to be a lack of sufficient innovative thought and focus on solutions that address climate change and provide additional societal benefits. For example, the use of coal fly ash in concrete not only produces less expensive and structurally better concrete, it can result in reducing greenhouse gases by replacing a portion of the cement used in concrete. In the world, there is only one country, Israel, that has more trees on its lands than it had 100 years ago. What about planting trees and desert greening, where the result provides added value for society, and there are opportunities for public/private partnerships? By no means is this meant to be a comprehensive list of the possibilities, but rather to reflect on the apparent lack of innovative thought. As a country, we seem fixated upon punishing select industries and even ourselves. If we have coal fired power plants spend billions of dollars sequestering carbon dioxide or otherwise force expensive closure, the people of this country gain no added benefits beyond carbon dioxide control. We need to move from a “punishment” focus, to using our ingenuity to explore and implement better solutions for the good people in the U.S.

Potentially, there is a different political dialogue regarding the uncertainties associated with climate change, if innovative solutions were more cost effective and provided substantial additional benefits.

To: Schnare, David[schnare.david@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]
From: Brown, Byron
Sent: Tue 3/7/2017 10:33:08 PM
Subject: RE: Letter to Administrator Pruitt EPA re Unredacted FOIA Documents

It would be helpful to know if any of the requested documents concern communications with the White House or other agencies.

From: Schnare, David
Sent: Tuesday, March 7, 2017 4:13 PM
To: Richardson, RobinH <Richardson.RobinH@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: FW: Letter to Administrator Pruitt EPA re Unredacted FOIA Documents

Robin:

Can you check in with Tom Dickerson to see where we are on this and does anyone needs to give an ok to producing these to Chairman Chaffetz, and if so, who.

d.

From: McGrath, William [<mailto:William.McGrath@mail.house.gov>]
Sent: Tuesday, March 7, 2017 3:34 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: FW: Letter to Administrator Pruitt EPA re Unredacted FOIA Documents

David,

Attached is a letter that Chairman Chaffetz sent to the EPA today requesting 275 specific

redacted documents the Committee has pulled from public foia documents. The documents are being sent in 6 attachments to Tom Dickerson due to the size. I'd be happy to provide you with a cd of the documents if you would like or can forward the 6 other emails.

Any assistance you could provide in expediting a response to the Committee would be appreciated.

Regards,

Bill

Bill McGrath

Staff Director

Subcommittee on Interior, Energy and Environment

House Committee on Oversight and Gov't Reform

Phone: (202) 225-6534

Email: William.McGrath@mail.house.gov

From: Casey, Sharon

Sent: Tuesday, March 7, 2017 3:24 PM

To: Dickerson.Tom@epa.gov

Cc: Feeley, Drew <Drew.Feeley@mail.house.gov>; McGrath, William <William.McGrath@mail.house.gov>; McKenna, Liam <Liam.McKenna@mail.house.gov>

Subject: Letter to Administrator Pruitt EPA re Unredacted FOIA Documents

Attached please find a letter from Chairman Chaffetz of the U.S. House of Representatives Committee on Oversight and Government Reform. Please note the

letter requests a response by March 21, 2017.

Attachments will follow in 6 emails.

Please acknowledge receipt of this letter.

Thank you,

Sharon Casey

Sharon Ryan Casey

Deputy Chief Clerk



Committee on Oversight and Government
Reform

2157 Rayburn Building, Washington, DC 20515

202-593-8219 sharon.casey@mail.house.gov

To: Schnare, David[schnare.david@epa.gov]
From: Greaves, Holly
Sent: Fri 3/3/2017 3:17:20 PM
Subject: Climate funding
[image2017-03-02-221806.pdf](#)

Hi David, attached please find a soft copy of the climate change funding. Please let me know if you need anything else.

Holly

>

To: Schnare, David[schnare.david@epa.gov]
From: Cleland-Hamnett, Wendy
Sent: Wed 3/15/2017 9:04:46 PM
Subject: Re: Resignation

And best wishes to you in the future as well.

Wendy Cleland-Hamnett
Acting Assistant Administrator
Principal Deputy Assistant Administrator
Office of Chemical Safety & Pollution Prevention
U.S. EPA

On Mar 15, 2017, at 2:41 PM, Schnare, David <schnare.david@epa.gov> wrote:

Dear colleagues:

Transitions begin and they end. I have been honored to have had the opportunity to serve the Trump Administration, but I have completed as much as I am able. Thus it is time for me to move on.

I will resign effective COB Friday and will be on leave until then.

My contact information for any who wish to remain in touch:

Personal Phone/Ex. 6

Personal Email/Ex. 6

Personal Email/Ex. 6

I wish each of you the best.

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]
From: Kaplan, Robert
Sent: Tue 3/14/2017 7:56:26 PM
Subject: RE: Meeting Request RE NESHAP for Felman

Deliberative Process Privilege/Ex. 5

- bob

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Cell: Personal Phone/Ex. 6

Direct: 312-886-1499

Main: 312- 886-3000

From: Schnare, David
Sent: Tuesday, March 14, 2017 2:46 PM
To: Kaplan, Robert <kaplan.robert@epa.gov>
Subject: Fwd: Meeting Request RE NESHAP for Felman

Why would I want to take this meeting?

dschnare

Sent from my iPhone

Begin forwarded message:

From: "Mortimer, Megan" <MMortimer@cozen.com>
Date: March 14, 2017 at 3:43:24 PM EDT
To: "schnare.david@epa.gov" <schnare.david@epa.gov>
Subject: Meeting Request RE NESHAP for Felman

Good Afternoon Mr. Schnare,

I am writing to request a meeting with you on behalf of our client Felman Production to discuss the NESHAP final rule regarding the production of ferroalloys. We know that you have had conversations with representatives from Eramet Marietta on this issue and they thought it would be beneficial for us to reach out to you as well.

It turns out that the General Counsel for Felman, Robert Powell, will be in DC this Thursday March 16. Do you have any time on that day for a meeting with Mr. Powell?

Thanks so much!

Megan Mortimer

Megan Mortimer, Cozen O'Connor Public Strategies

202-463-2536

Sent from my iPad

Notice: This communication, including attachments, may contain information that is confidential and protected by the attorney/client or other privileges. It constitutes non-public information intended to be conveyed only to the designated recipient(s). If the reader or recipient of this communication is not the intended recipient, an employee or agent of the intended recipient who is responsible for delivering it to the intended recipient, or you believe that you have received this communication in error, please notify the sender immediately by return e-mail and promptly delete this e-mail, including attachments without reading or saving them in any manner. The unauthorized use, dissemination, distribution, or reproduction of this e-mail, including attachments, is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) is not a waiver of any attorney/client or other privilege.

To: Schnare, David[schnare.david@epa.gov]
From: Sugiyama, George
Sent: Wed 3/1/2017 1:33:45 PM
Subject: Budget

Herbicide for Iris's ?? Eliminating petunias won't make me happy. Gotta get the big Hurt.

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]
From: Dunham, Sarah
Sent: Fri 3/3/2017 11:38:45 PM
Subject: small refinery hardship petition criteria (contains CBI)
RFS Small Refinery Past Decisions 2.27.17.docx
ATT00001.htm

Hi-

Sorry for the Friday evening email, but I wanted to follow-up on the RFS small refinery hardship petitions. **Deliberative Process Privilege/Ex. 5**

Deliberative Process Privilege/Ex. 5

Evaluating Small Refinery RFS Hardship Petitions

-- Under the RFS program, small refineries can petition for a waiver of compliance obligations. To qualify for relief, EPA must find that the refinery is subject to “disproportionate economic hardship.”

-- EPA conducts an extensive analysis and evaluation of each small refinery hardship petition. Our approach has been litigated in court and we have been upheld on two different occasions.

-- Our analysis is comprehensive and not easily summarized. In brief, however, here are the key components of our evaluation to determine “disproportionate economic hardship”:

1. As required by the statute, EPA considers DOE input on each petition. DOE developed a scoring matrix to help assess small refinery hardship petitions, and EPA considers that scoring as part of our own review.

2. EPA also considers other economic factors, including two key metrics: the three-year net refining margin and net income. For both of those factors, we assess an individual refinery’s performance relative to the industry as a whole. We have attached a summary of past decisions (contains CBI) that shows where various refineries have been on these two metrics.

We have issued 6 grants for the 2016 petition year, and have 5 petitions we have not yet responded to.

The compliance deadline for 2016 is March 31, 2016. Acting on these petitions as quickly as possible gives the impacted parties time to make their required compliance demonstrations.

To: Schnare, David[schnare.david@epa.gov]
From: Greaves, Holly
Sent: Fri 3/10/2017 4:01:26 PM
Subject: RE: we received OPM approval of your extension

Thanks David!

From: Schnare, David
Sent: Thursday, March 9, 2017 3:36 PM
To: Greaves, Holly <greaves.holly@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>
Subject: FW: we received OPM approval of your extension

From: Vizian, Donna
Sent: Thursday, March 9, 2017 3:33 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: we received OPM approval of your extension

30 days for you and Holly

To: Schnare, David[schnare.david@epa.gov]
From: Jon Sperl
Sent: Tue 3/7/2017 10:19:01 PM
Subject: RE: Cost estimates for Science Committee bills

Ok great, let me give you a call at 10:00am tomorrow. Is Ex. 6 Personal Privacy (PP) the correct number to reach you at?

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Tuesday, March 07, 2017 5:09 PM
To: Jon Sperl
Subject: RE: Cost estimates for Science Committee bills

Jon:

I have a major regulatory meeting at 11:00 tomorrow. I am free from 9:30 am to 10:45 am and from 1:00 pm to 2:45 pm.

I have examined the current cost estimates and believe them to be far in excess of what will be needed. EPA has guidelines requiring use of information that meets our IQA requirements. If we follow that, and require of the scientific community that they provide the information required in the bill, and use only those scientific studies so buttressed, then the cost is only the cost of providing a link to the archived data on the university's servers.

It will mean that we will need to change the culture at some universities, but that is in line with recent journal practices (e.g., Nature now requiring reproducibility before publication). It may also require some changes in the grants administration in the federal government, including at EPA, but that is long overdue.

I look forward to speaking with you.

David.

David W. Schnare

Asst. Deputy Administrator

US EPA

From: Jon Sperl [<mailto:Jon.Sperl@cbo.gov>]
Sent: Tuesday, March 7, 2017 4:53 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Cost estimates for Science Committee bills

Mr. Schnare,

My name is Jon Sperl, and I'm an analyst at the Congressional Budget Office who covers the Environmental Protection Agency. I'm working on a cost estimate for the HONEST Act, which is being marked up this Thursday.

Staffers from the House Science Cmte referred me to you. Would you be available tomorrow at 11:00am to discuss how EPA might implement the bill? For context, CBO reviewed legislation very similar to the HONEST Act in April 2015 (estimate for S. 544).

Cheers,

Jon

Jon Sperl

Associate Analyst, Congressional Budget Office

Federal Estimates (EPA), State and Local Gov. Estimates (Energy/Environment/Other)

Ford House Office Building, Room 441-D

Ex. 6 Personal Privacy (PP)

jon.sperl@cbo.gov

From: Brazauskas, Joseph [<mailto:Joseph.Brazauskas@mail.house.gov>]
Sent: Monday, March 06, 2017 6:20 PM
To: Jon Sperl
Cc: Wydler, Chris; Fromm, Molly (Boyl); Yamada, Richard
Subject: RE: Cost estimates for Science Committee bills

Jon,

It was great to speak with you earlier today regarding the HONEST Act and SAB Reform Act. For obtaining the agency perspective on these bills we believe that a knowledgeable source would be the Assistant Deputy Administrator of the EPA, Dr. David Schnare. His email is schnare.david@epa.gov and phone number is

Ex. 6 Personal Privacy (PP)

Thank you,

Joe

From: Fromm, Molly (Boyl)
Sent: Monday, March 6, 2017 3:09 PM
To: Robert Reese <Robert.Reese@cbo.gov>
Cc: Wydler, Chris <Chris.Wydler@mail.house.gov>; Brazauskas, Joseph <Joseph.Brazauskas@mail.house.gov>; Jon Sperl <Jon.Sperl@cbo.gov>
Subject: RE: Cost estimates for Science Committee bills

Thanks Robert.

From: Robert Reese [<mailto:Robert.Reese@cbo.gov>]
Sent: Monday, March 6, 2017 3:07 PM
To: Fromm, Molly (Boyl) <molly.fromm@mail.house.gov>
Cc: Wydler, Chris <Chris.Wydler@mail.house.gov>; Brazauskas, Joseph

<Joseph.Brazauskas@mail.house.gov>; Jon Sperl <Jon.Sperl@cbo.gov>

Subject: RE: Cost estimates for Science Committee bills

Hi Molly,

Jon Sperl (cc'd) is the analyst that covers EPA related bills. I believe he would be the analyst that would cover these.

Thanks,

Robert

From: Fromm, Molly (Boyl) [mailto:molly.fromm@mail.house.gov]

Sent: Monday, March 06, 2017 1:37 PM

To: Robert Reese

Cc: Wydler, Chris; Brazauskas, Joseph

Subject: Cost estimates for Science Committee bills

Hi Robert, the Science Committee will mark up the attached two bills this Thursday and they will be on the Floor (considered under a rule) next week, so we need to have scores as soon as possible in order to file reports/go to the Rules Committee. The first bill, the Honest and Open New EPA Science Treatment Act of 2017, is similar to H.R. 1030 from the 114th Congress but has been modified to address the scoring issue from last Congress. We are happy to walk you through the changes, so please give me a call to discuss. The second bill, the EPA Science Advisory Board Reform Act of 2017, is nearly identical to H.R. 1029 from the 114th. Again, please reach out with any questions – my direct is

Ex. 6 Personal Privacy (PP)

Thank you,

Molly

Molly Boyd Fromm

General Counsel and Parliamentarian

House Science, Space, and Technology Committee

Ex. 6 Personal Privacy (PP)

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Kreutzer, David
Sent: Fri 3/3/2017 3:15:56 PM
Subject: Fwd: OITA Weekly Report

Ryan,

The first item in the list below (SOI with the World Bank) raises a red flag. The email doesn't say anything about climate/CO2, but since this was all done in the McCarthy EPA, I'd be very surprised if there weren't CO2 targets of some sort.

I'll ask for a copy of the SOI and give it a look.

David

Sent from my iPhone

Begin forwarded message:

From: "Nishida, Jane" <Nishida.Jane@epa.gov>
Date: March 3, 2017 at 8:10:24 AM EST
To: "Kreutzer, David" <kreutzer.david@epa.gov>
Subject: FW: OITA Weekly Report

David,

I just found out that you are not on the Weekly Report Group list, so I will copy you in the future.

Jane

From: Nishida, Jane
Sent: Thursday, March 02, 2017 4:28 PM
To: Weekly Report Group <Weekly_Report_Group@epa.gov>
Subject: OITA Weekly Report

Action Items (Including Hot Issues and Important Deadlines)

EPA - World Bank Cooperation: OITA seeks approval to sign a Statement of Intent (SOI) between EPA and the World Bank to cooperate on environmental issues that are shared priorities.

- Priority areas include air quality management, reducing mercury in artisanal and small-scale gold mining, enacting lead paint laws consistent with the U.S. standard, and promoting environmental governance.
- The SOI is a voluntary arrangement between EPA and the World Bank that expresses the good faith intentions of the Parties to cooperate on priority areas and does not create any contractual obligations.
- The SOI has been reviewed by all the relevant EPA offices and OGC, and the World Bank is ready to sign the document.

Upcoming Engagements (Including Major Public Events)

G7 Environment Ministers Meeting: The Administrator has received a formal invitation letter from the Italian Minister of Environment to participate in the G7 Environment Ministers Meeting in Bologna, Italy, on June 11-12.

- Italy will also be organizing two side events, one focused on the role of universities/research centers in sustainable development and the second focused on the contribution of firms to the 2030 Agenda on Sustainable Development.
- OITA represented EPA at the first Policy Coordination Committee (PCC) meeting convened by the National Security Staff to prepare for the G7 and G20 Leader's Summits, in May and June respectively, that the President is expected to attend.
- The PCC reviewed the issues on the G7 and G20 agenda - the EPA related agenda items include food waste as a part of the food security dialogue, and resource efficiency and marine litter in coordination with the State Department. The Sub-PCC on Climate and Energy is also looking at oil and gas infrastructure, energy efficiency, and fossil fuel subsidies.

National Tribal Caucus Meeting: The Executive Officers of the National Tribal

Caucus (NTC) will be holding a conference call with ECOS Executive Officers on March 3.

- ██████████ NTC and ECOS call builds on the emerging partnership between state and tribal governments to cooperate on environmental issues such as emergency response and solid waste management.
- ██████████ NTC Chair is planning to attend the ECOS meeting in April and would like to schedule an introductory meeting with the Administrator while he is in DC.
- ██████████ NTC is also working on collecting and consolidating tribal budget needs, including tribal infrastructure needs, and updating the NTC transition document for the new EPA leadership team.

Past week accomplishments (Good News Stories)

EPA Assists the US-Brazil Business Council: OITA met with representatives from the US-Brazil Business Council which is interested in finding ways to reduce barriers to US private investment in Brazil.

- ██████████ The Council is interested in helping the Brazilian Government's process to reform its EIA and licensing procedures which the Council's membership view as overly burdensome, time-consuming, and uncoordinated.
- ██████████ The Council was particularly interested in support that EPA has provided to Central America countries on EIA issues under the Central American Free Trade Agreement Program (CAFTA).
- ██████████ They think the "Technical Review Guidelines for Environmental Impact Assessments in the Tourism, Energy and Mining Sectors" that EPA developed under CAFTA would be particularly helpful in Brazil and plan to follow up with the US Embassy in Brasilia.

To: Schnare, David[schnare.david@epa.gov]
From: Benton, Donald
Sent: Fri 3/3/2017 10:33:33 PM
Subject: FW: 9 things you need to know about the new revised method EPA 624.1

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Zintek, Lawrence
Sent: Thursday, March 2, 2017 12:22 PM
To: Benton, Donald <benton.donald@epa.gov>
Subject: FW: 9 things you need to know about the new revised method EPA 624.1

Don,

This is related to the Update Rule. Marion Kelly from OW sent this to me about the Rule, it was written by Shimadzu, a vendor- e-mail and link below. They did one for 608 and they are going to do one for 625.

I know Lipps from Shimadzu, he can't say anything bad coming from a company but you have to read between the lines what he is saying. They know it.

Let me know what your staff says about it if you can. I know you are swamped.

Deliberative Process Privilege/Ex. 5

My 2 cents.

Thanks,

Larry

9 things you need to know about the new revised method EPA
624.1

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

There they are. Nine things I found when reviewing the new update to EPA Method 624. You may find more or perhaps an error in my findings. If you do, please do not hesitate to share at wclipps@shimadzu.com. Thank You for reading.

Lawrence Zintek, Ph.D.

US EPA Region 5 Chicago Regional Laboratory

10th Floor

536 South Clark Street

Chicago, IL 60605

312-886-2925

From: Kelly, Marion

Sent: Thursday, March 02, 2017 10:04 AM

To: Zintek, Lawrence <zintek.lawrence@epa.gov>

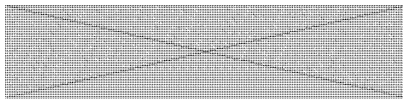
Subject: Fw: 9 things you need to know about the new revised method EPA 624.1

From: William Lipps <wclipps@shimadzu.com>

Sent: Thursday, March 2, 2017 10:56 AM

To: Kelly, Marion

Subject: 9 things you need to know about the new revised method EPA 624.1



On December 15 2016, the EPA administrator signed an update to 40 CFR Part 136 methods.

This new update included a revision to Method 624, Purgeables by GCMS

I have read through the updated method and found nine important things that you should know.

[Read More](#)

Reply to this e-mail if you would like more information on Shimadzu instruments for environmental testing, this update, or for any other questions regarding EPA, ASTM, or Standard Methods environmental methods.

Click [here](#) if you would like a salesperson to call you.

Regards,

**William Lipps
Environmental Marketing Manager
Shimadzu Scientific Instruments**

Our Mailing Address is:
7102 Riverwood Drive Columbia, MD 21046, United States

[Unsubscribe](#)



To: Schnare, David[schnare.david@epa.gov]
From: Fugh, Justina
Sent: Wed 3/15/2017 8:55:10 PM
Subject: Your Resignation and your ethics obligations

Hi there,

Since you have announced your resignation, David, I have some good news for you. You are now excused from having to file the public financial disclosure report altogether because you will not have served in a designated position for more than 60 days in this calendar year. Also, this means that didn't have to sign the Trump ethics pledge, so I will destroy that document after your last day.

With regard to your post-employment obligations under 18 USC 207, you will be subject only to the permanent restriction set forth at 18 USC 207(a)(1). Under this provision, you are prohibited forever from representing a third party in an appearance before or communication to, with the intent to influence, any member of the United States government on a particular matter involving specific parties in which they participated personally and substantially while a government employee if the United States still has an interest in the matter. However, this restriction does not prohibit providing "behind the scenes" assistance (except for attorneys who are subject to their own bar rules). And please note that, in some cases, the District of Columbia may be considered a federal entity under this provision.

If you worked on a "particular matter involving specific parties," then you can't represent another entity back to the government on that same matter. Examples of such matters include an investigation, application, request for a ruling or determination, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The term does not include a rulemaking or other particular matter of general applicability, but would include a notice of intent that is specific to one chemical, for example. Even if a post-employment communication or appearance concerns the same particular matter, the representational bar does not apply unless the United States is a party or has a direct and substantial interest in that matter at the time of the post-employment representation.

If you have any questions about your ethics obligations, please feel free to contact me at any time.

Best regards,

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: "Schnare, David" <schnare.david@epa.gov>

Date: March 15, 2017 at 2:41:18 PM EDT

To: 2017CareerTransitionLeaders

<2017CareerTransitionLeaders@epa.gov>, 2017HQfirstassistants

<2017HQfirstassistants@epa.gov>, 2017Regionfirstassistants

<2017Regionfirstassistants@epa.gov>

Cc: "Willis, Sharnett" <Willis.Sharnett@epa.gov>, "Brazauskas,

Joseph" <Joseph.Brazauskas@mail.house.gov>,

"john.k.mashburn@epa.gov"

John Mashburn EOP/Ex. 6

"Catanzaro, Michael J."

EOP/Ex. 6

EOP/Ex. 6

"Bremberg, Andrew P."

EOP/Ex. 6

"Jackson, Ryan"

<jackson.ryan@epa.gov>

Subject: Resignation

Dear colleagues:

Transitions begin and they end. I have been honored to have had the opportunity to serve the Trump Administration, but I have completed as much as I am able. Thus it is time for me to move on.

I will resign effective COB Friday and will be on leave until then.

My contact information for any who wish to remain in touch:

Personal Email/Ex. 6

Personal Phone/Ex. 6

I wish each of you the best.

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]
From: Connors, Sandra
Sent: Wed 3/1/2017 12:38:57 PM
Subject: Draft Daily Hot Topic March 1
3-1-2017 Daily Hot Topics.docx

Sandra

Sandra L. Connors
Senior Advisor

Office of the Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, Room 3317
Washington, DC 20460
(202)564-4231

connors.sandra@epa.gov

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]
From: Benton, Donald
Sent: Fri 3/3/2017 10:14:49 PM
Subject: FW: Request to Reconsider and Rescind the U.S. EPA Region 5 Review Letter re NPDES Permit No. MN0051250
[CGMC -MESERB Letter re Delano letter 03022017. Final.pdf](#)
[Attachment 1. EPA Region 5 Letter re Delano.pdf](#)
[Attachment 2. EPA no objection re Glecoe.pdf](#)
[Attachment 3. Letter from MCEA re Glencoe.pdf](#)

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Daniel M Marx [mailto:DMMarx@flaherty-hood.com]
Sent: Thursday, March 2, 2017 6:16 PM
To: Kaplan, Robert <kaplan.robert@epa.gov>
Cc: Pruitt, Scott <Pruitt.Scott@epa.gov>; Benton, Donald <benton.donald@epa.gov>; Schnare, David <schnare.david@epa.gov>; Ireland, Scott <ireland.scott@epa.gov>; Flood, Rebecca (MPCA) <rebecca.flood@state.mn.us>; Blasing, Nicole (MPCA) <nicole.blasing@state.mn.us>
Subject: Request to Reconsider and Rescind the U.S. EPA Region 5 Review Letter re NPDES Permit No. MN0051250

Dear Administrator Kaplan:

Attached please find a letter and attachments from the Coalition of Greater Minnesota Cities (CGMC) and the Minnesota Environmental Science and Economic Review Board (MESERB), which represent 93 communities in rural Minnesota.

CGMC/MESERB respectfully request that you reconsider and rescind a letter sent by EPA Region 5 (Region 5) to the Minnesota Pollution Control Agency (MPCA), on January 4, 2017, in which Region 5 issued an unlawful mandate requiring that water quality based effluent limits for municipal permit holders discharging to impaired waters be set at amounts equal to the applicable water quality standard in the absence of a completed total maximum daily load study (TMDL) (*see* attached, U.S. Environmental Protection Agency Review of the Pre-public Notice NPDES Permit for the City of Delano Wastewater Treatment Facility, Delano, Minnesota, Permit No. MNQ051250 (“mandate letter” or the “mandate”)).

This unprecedented mandate lacks support under the Clean Water Act and constitutes an illegal legislative rule that will have severe negative economic impacts for local governments throughout rural Minnesota and lead to the misuse of limited local and state clean water resources.

As detailed in the attached letter, the mandate clearly exceeds EPA’s statutory authority by requiring MPCA to issue permit limits that, according to MPCA’s own water quality data and analysis, are more restrictive than necessary to achieve the applicable water quality standard. Further, the mandate constitutes a significant reversal for Region 5 as it previously approved the very analysis performed by MPCA that it rejected in the mandate letter.

Region 5 justified this mandate by citing to EPA’s *1995 Water Quality Guidance for the Great Lakes System: Supplementary Information Document ("SID")* (EPA-820-B-95-001) (“Great Lakes Guidance”). This Guidance is clearly limited in application to the Great Lakes System (which does not cover the watershed at issue in the letter) and does not apply to phosphorus (the parameter at issue in the letter). *See Great Lakes Guidance, pp. 29, 48, 54-55.* CGMC/MESERB are perplexed by Region 5’s assertion that this Guidance—which explicitly does not apply to phosphorus—mandates that MPCA set permit limits for *phosphorus* equal to the applicable standard in the absence of a completed TMDL.

Accordingly, CGMC/MESERB respectfully request that Region 5 reconsider and rescind the mandate letter. Please respond to this request within 30 days as the mandate letter could have

immediate negative consequences for the local governments that CGMC/MESERB represent.

Thank you for your consideration and we look forward to working with Region 5 to address this issue.

If you or your staff have any questions or concerns regarding the attached letter please contact me at dmmarx@flaherty-hood.com or via telephone at 651-225-8840.

Sincerely,

Daniel Marx, Counsel for CGMC and MESERB

Daniel Marx, Associate Attorney

Flaherty & Hood, P.A.

525 Park Street, Suite 470

St. Paul, MN 55103

Direct Dial: Personal Phone/Ex. 6

Office: 651-225-8840

dmmarx@flaherty-hood.com

CONFIDENTIALITY NOTICE/ATTORNEY-CLIENT PRIVILEGE: This message, including any attachments, contains confidential and privileged information which is intended solely for the individual or entity to which it is addressed and is subject to the attorney-client privilege. If you are not the intended recipient, please destroy all copies of the message(s) and/or attachment(s). If you have received this message in error, please notify the sender immediately. Any unauthorized review, use, disclosure, dissemination, forwarding, printing or copying of this email is strictly prohibited and may be unlawful.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 04 2017

REPLY TO THE ATTENTION OF:

WN-15J

Nicole Blasing, Supervisor
North Central Regional Unit
Municipal Wastewater Section
Minnesota Pollution Control Agency
7678 College Road
Suite 105
Baxter, MN 56425

Re: U.S. Environmental Protection Agency Review of the Pre-public Notice NPDES Permit for the City of Delano Wastewater Treatment Facility, Delano, Minnesota, Permit No. MN0051250

Dear Ms. Blasing:

The U.S. Environmental Protection Agency (EPA) has reviewed the Pre Public Notice Draft National Pollutant Discharge Elimination System (NPDES) Permit, fact sheet and supporting documents for the City of Delano Wastewater Treatment Facility (the Facility) received on August 29, 2016. EPA has identified key issues that must be resolved prior to permit issuance.

The Facility discharges to an unnamed tributary to the South Fork of the Crow River, segment UAID 07010205-508 (segment), which MPCA has determined is exceeding the River Eutrophication Standards (RES) that apply to that segment of the river. (Fact Sheet, Lindon Memo for South Fork Crow River Watershed Phosphorus Effluent Limit Analysis) The RES that apply to the South Fork Crow River include a numeric standard for total phosphorus (TP) at 0.150 mg/L, and chlorophyll-a at 0.035 mg/L which apply for the 122-day season from June 1 to September 30. MPCA has measured an average of 0.322 mg/L TP and 0.101 chlorophyll-a in this segment of the river. Subsequently, MPCA has found that reasonable potential (RP) exists for all of the facilities contributing phosphorus to this segment of the South Fork Crow River to cause or contribute to the exceedance of the RES, including the Delano Wastewater Treatment Facility.

In light of these facts, we have the following comments for you on the pre-public notice draft permit:

1. ***Water Quality Based Effluent Limits That are Derived From and Comply With Minnesota's River Eutrophication Standards.*** Section 301(b)(1)(C) of the CWA and 40 C.F.R. § 122.44(d)(1) require that NPDES permits include effluent limitations necessary to achieve water quality standards established under section 303(c) of the CWA. 40 C.F.R. § 122.44(d)(1) provides that NPDES permits shall include requirements necessary

to “[a]chieve water quality standards established under section 303 of the CWA.” 40 C.F.R. § 122.44(d)(1)(vii) provides that, “[w]hen developing water quality based effluent limits under this paragraph the permitting authority shall ensure that: (A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards.” Where — as is the case here — water quality standards would be exceeded in the receiving stream regardless of the discharge, the WQBEL must be set equal to the water quality standard criteria for the pollutant at issue, unless a Total Maximum Daily Load (TMDL) is developed and approved by EPA in accordance with CWA Section 303(d). *See* enclosed excerpt from U.S. EPA’s 1995 *Water Quality Guidance for the Great Lakes System: Supplementary Information Document (“SID”)* (EPA-820-B-95-001). Where a TMDL has been approved, the water quality based effluent limits (WQBEL) may be set higher than the criteria at issue if the TMDL contains allocations for the other sources of pollutants to the water body, provided that the sum of all of the allocations will result in water quality standards being achieved. No TMDL has been approved for the water bodies at issue here. Consequently, in light of the finding by MPCA that the receiving segment of the South Fork of the Crow River is exceeding the RES, to be consistent with federal law, a WQBEL of 0.150 mg/L phosphorus, expressed as an average over the 122-day season of June 1 through September 30 must be included in the permit.

It may be possible for MPCA to translate a 0.150 mg/L seasonal phosphorus WQBEL into a monthly WQBEL, provided that MPCA utilizes technically sound, defensible statistical procedures for doing so, such as the method MPCA uses for toxics found in EPA’s Technical Support Document for Water Quality-based Toxics Control. If MPCA were to follow the TSD approach, the seasonal limitation of 0.150 mg/L would be translated to a monthly limitation of 0.21 mg/L. MPCA, however, calculated a WQBEL for total phosphorus for this facility at 0.53 mg/L as a calendar month average for June – September during “Phase 2”. (See the second comment regarding the meaning of Phase 2 or II). MPCA’s explanation as to how it derived this limit is difficult to understand, but it appears to rely upon development of a waste load allocation that would apply to all of the facilities in the river segment. This waste load allocation is then modified in a manner that is not described at all in the memo other than to state that facility size and type are considered to distribute the waste load allocation to each facility and develop a facility specific “target” effluent concentration. MPCA then multiplied that target concentration by 2.1. Although EPA does not completely understand how MPCA arrived at its proposed WQBEL, it seems clear to EPA that the 0.53 mg/L monthly average limit for phosphorus is unsupported and exceeds what is required to meet the river eutrophication standards.

Further, MPCA did not fully describe the data and method it used to calculate the proposed monthly average limit of 0.53 mg/L in the “Lindon Memo” or the fact sheet that MPCA developed in support of the pre-public notice draft permit. If MPCA chooses to include a monthly limit, MPCA should explain the basis for how it developed that limit, in a manner that is easier for the public to understand, to ensure that the public can play a meaningful role in development and review of such limit. *See* 33 U.S.C. §§ 1251(e) and 1342(b)(3).

2. ***Uncertain and Unenforceable Effective Date for Total Phosphorus WQBEL.*** The Limits and Monitoring Table included in the draft permit contains four entries for total phosphorus. The first two entries require monitoring only and are identical except that one applies to "Phase 1" and the other to "Phase 2", and the "Phase 1" requirement requires monitoring year round while the "Phase 2" requirement only requires monitoring October – May. The other two entries contain limits. One of these is described as "Phase 2" and contains the effluent limit for total phosphorus at 0.53 mg/L that applies June – September. The last entry does not identify a "Phase" and contains the effluent limit based on MPCA's implementation of the total phosphorus waste load allocation calculated to protect Lake Pepin.

We could not find a definition or description of Phase 1 or Phase 2. We found mention of Phase I and Phase II in the draft permit and fact sheet that discusses planned facility expansion, with Phase I completed in 2005 and Phase II planned to be completed in 2025. We found no explanation of why the facility would not need a limit until an expansion is completed in 2025.

While the Permit includes two nearly identical compliance schedules (starting at paragraphs 5.13.35 and 6.7), neither schedule refers to any specific effluent limits for which the schedule is being used to grant the facility time to achieve, nor do they reference Phase 1 or 2. Further, none of the limits in the Limits and Monitoring table are specifically identified as "final" limits. If MPCA believes that a compliance schedule would be appropriate for any WQBEL included in the permit (as described above, EPA believes that a more stringent limit than 0.53 mg/L is necessary), the compliance schedule must be consistent with 40 CFR § 122.47, as explained in EPA's May 10, 2007, Memorandum entitled "Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits", which is available at https://www3.epa.gov/npdes/pubs/memo_complianceschedules_may07.pdf. The compliance schedule provisions included in the pre-public notice draft permit do not appear to be consistent with 40 CFR § 122.47. In order to allow EPA and the public to assess whether any compliance schedule that MPCA chooses to include in the permit is consistent with 40 CFR § 122.47, MPCA will need to provide information demonstrating that the schedule requires compliance as soon as possible. MPCA should also provide more information to explain why there are two schedules in the permit and which effluent limits or permit conditions are affected by the inclusion of the schedules in the permit.

We look forward to working with you as you proceed to public notice a draft of the permit. We will review that permit per the guidelines set forth in the Memorandum of Agreement between MPCA and EPA. When the draft Permit is prepared, please forward a copy to r5npdes@epa.gov. Please include the EPA permit number, the facility name, and the words "Draft Permit" in the message title. If you have any questions related to EPA's review of this permit, please contact Krista McKim at (312) 353-8270 or at mckim.krista@epa.gov.

Sincerely,

Jodie N. Opie for DSI

D. Scott Ireland, Chief
Section 1, NPDES Programs Branch

Enclosures:

Excerpt from U.S. EPA's 1995 *Water Quality Guidance for the Great Lakes System: Supplementary Information Document ("SID")* (EPA-820-B-95-001)

EPA Memorandum, Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits, May 10, 2007.

cc: Molly Baumann, MPCA, electronically



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

May 10, 2007

MEMORANDUM

SUBJECT: Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits

FROM: James A. Hanlon, Director
Office of Wastewater Management
/s/

TO: Alexis Strauss, Director
Water Division
EPA Region 9

Recently, in discussions with Region 9, questions have been raised concerning the use of compliance schedules in National Pollutant Discharge Elimination System (NPDES) permits consistent with the Clean Water Act (CWA) and its implementing regulations at 40 C.F.R. § 122.47. The use of compliance schedules in NPDES permits is also the subject of ongoing litigation in California. The purpose of this memo is to provide a framework for the review of permits consistent with the CWA and its implementing regulations.

When may a permitting authority include a compliance schedule in a permit for the purpose of achieving a water quality-based effluent limitation?

In *In The Matter of Star-Kist Caribe, Inc.*, 3 E.A.D. 172, 175, 177 (1990), the EPA Administrator interpreted section 301(b)(1)(C) of the CWA to mean that 1) after July 1, 1977, permits must require immediate compliance with (*i.e.*, may not contain compliance schedules for) effluent limitations based on water quality standards adopted before July 1, 1977, and 2) compliance schedules are allowed for effluent limitations based on standards adopted after that date only if the State has clearly indicated in its water quality standards or implementing regulations that it intends to allow them.

What principles are applicable to assessing whether a compliance schedule for achieving a water quality-based effluent limitation is consistent with the CWA and its implementing regulations?

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (minimum 30% Postconsumer)

ED_001612_00029529-00005

1. "When appropriate," NPDES permits may include "a schedule of compliance leading to compliance with CWA and regulations . . . as soon as possible, but not later than the applicable statutory deadline under the CWA." 40 C.F.R. § 122.47(a)(1). Compliance schedules that are longer than one year in duration must set forth interim requirements and dates for their achievement. 40 C.F.R. § 122.47(a)(3).

2. Any compliance schedule contained in an NPDES permit must be an "enforceable sequence of actions or operations leading to compliance with a [water quality-based] effluent limitation ["WQBEL"]" as required by the definition of "schedule of compliance" in section 502(17) of the CWA. *See also* 40 C.F.R. § 122.2 (definition of schedule of compliance).

3. Any compliance schedule contained in an NPDES permit must include an enforceable final effluent limitation and a date for its achievement that is within the timeframe allowed by the applicable State or federal law provision authorizing compliance schedules as required by CWA sections 301(b)(1)(C); 502(17); the Administrator's decision in *Star-Kist Caribe, Inc.* 3 E.A.D. 172, 175, 177-178 (1990); and EPA regulations at 40 C.F.R. §§ 122.2, 122.44(d) and 122.44(d)(1)(vii)(A).

4. Any compliance schedule that extends past the expiration date of a permit must include the final effluent limitations in the permit in order to ensure enforceability of the compliance schedule as required by CWA section 502(17) and 40 C.F.R. § 122.2 (definition of schedule of compliance).

5. In order to grant a compliance schedule in an NPDES permit, the permitting authority has to make a reasonable finding, adequately supported by the administrative record, that the compliance schedule "will lead[] to compliance with an effluent limitation . . ." "to meet water quality standards" by the end of the compliance schedule as required by sections 301(b)(1)(C) and 502(17) of the CWA. *See also* 40 C.F.R. §§ 122.2, 122.44(d)(1)(vii)(A).

6. In order to grant a compliance schedule in an NPDES permit, the permitting authority has to make a reasonable finding, adequately supported by the administrative record and described in the fact sheet (40 C.F.R. § 124.8), that a compliance schedule is "appropriate" and that compliance with the final WQBEL is required "as soon as possible." *See* 40 C.F.R. §§ 122.47(a), 122.47(a)(1).

7. In order to grant a compliance schedule in an NPDES permit, the permitting authority has to make a reasonable finding, adequately supported by the administrative record, that the discharger cannot immediately comply with the WQBEL upon the effective date of the permit. 40 C.F.R. §§ 122.47, 122.47(a)(1).

8. Factors relevant to whether a compliance schedule in a specific permit is "appropriate" under 40 C.F.R. § 122.47(a) include: how much time the discharger has already had to meet the WQBEL(s) under prior permits; the extent to which the

discharger has made good faith efforts to comply with the WQBELs and other requirements in its prior permit(s); whether there is any need for modifications to treatment facilities, operations or measures to meet the WQBELs and if so, how long would it take to implement the modifications to treatment, operations or other measures; or whether the discharger would be expected to use the same treatment facilities, operations or other measures to meet the WQBEL as it would have used to meet the WQBEL in its prior permit.

9. Factors relevant to a conclusion that a particular compliance schedule requires compliance with the WQBEL "as soon as possible," as required by 40 C.F.R. § 122.47(a)(1) include: consideration of the steps needed to modify or install treatment facilities, operations or other measures and the time those steps would take. The permitting authority should not simply presume that a compliance schedule be based on the maximum time period allowed by a State's authorizing provision.

10. A compliance schedule based solely on time needed to develop a Total Maximum Daily Load is not appropriate, consistent with EPA's letter of October 23, 2006, to Celeste Cantu, Executive Director of the California State Water Resources Control Board, in which EPA disapproved a provision of the Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries for California.

11. A compliance schedule based solely on time needed to develop a Use Attainability Analysis is also not appropriate, consistent with EPA's letter of February 20, 2007, to Doyle Childers, Director Missouri Department of Natural Resources, nor is a compliance schedule based solely on time needed to develop a site specific criterion, for the same reasons as set forth in the October 23, 2006, (referenced in Paragraph 10) and February 20, 2007 letters.

If you have any questions, please contact me at (202) 564-0748 or have your staff contact Linda Boornazian at (202) 564-0221.



Water Quality Guidance for the Great Lakes System: Supplementary Information Document (SID)

Section VIII.E: Reasonable Potential

with existing State or Tribal procedures for converting wasteload allocations into water quality-based effluent limitations. Similar conforming changes have also been made to procedure 4.C to address TMDLs, wasteload allocations, and preliminary wasteload allocations. In making this clarification, EPA is remaining consistent with its intent expressed in the proposal that WQBELs be consistent with calculated wasteload allocations.

By including a separate provision in the final guidance addressing procedures to be followed in deriving WQBELs in the absence of a TMDL, EPA has not made a substantive change from the approach contained in the proposal. As discussed above, the structure of the proposed guidance would have called for the development of a TMDL for the purpose of deriving wasteload allocations where the permitting authority determined reasonable potential existed. The final Guidance has simply "moved" those procedures into a new subsection, 5.F.2.a., of appendix F of the Guidance. This "move" is necessitated by the fact that, under the final Guidance, the actual development of a TMDL is not a prerequisite to the establishment of a wasteload allocation and permit limits.

Finally, it is important to note that, as discussed in section VIII.C of this document, the final Guidance does not, like the proposal, require wasteload allocations to be set equal to zero in cases where background concentrations of the pollutant in the receiving water exceed criteria or values (non-attained waters), and a multiple source TMDL has not been completed. As noted in section VIII.C of this document, EPA did not include this provision (high background provision) in the final Guidance because setting a wasteload allocation at zero as a default, in the absence of a TMDL, may not be appropriate in many situations. EPA recognizes that many factors need to be considered when background water quality concentrations exceed criteria or values. Furthermore, many commenters objected to a mandate of setting wasteload allocations equal to zero in non-attained waters unless a multiple source TMDL has been completed. Commenters pointed out that such a mandate would, in effect, force all point sources to achieve zero discharge of pollutants to non-attained waters.

Once EPA concluded that it was inappropriate to include the high background provision in the final Guidance, EPA then had to determine if there is an appropriate alternative to the high background provision. Commenters suggested a range of alternatives for setting wasteload allocations for discharges to non-attained waters in the absence of a multiple source TMDL. The suggested alternatives ranged from setting the wasteload allocation to the most stringent applicable criterion up to setting the wasteload allocation equal to the background concentration of the receiving stream. Others suggested that the wasteload allocation be set equal to the greater of the most stringent applicable criterion or the background concentration. EPA examined these suggested alternatives to determine which of them were permissible readings of the national program requirements under the CWA.

Upon review of the alternatives suggested by commenters, EPA notes that in the absence of a TMDL under 40 CFR 130.7, there are several reasonable interpretations of national program requirements under the CWA. One

Water Quality Guidance for the Great Lakes System -- Supplementary Information Document

reasonable interpretation of national program requirements is that in non-attained waters and in the absence of a TMDL under 130.7, the wasteload allocation for a pollutant for which the waterbody is in non-attainment, may be set equal to the most stringent criterion or value applicable to the waterbody (criteria end-of-pipe). The concept of a mixing zone to provide for dilution obviously is not relevant where the stream already exceeds the water quality criterion. EPA believes that this approach is consistent with existing regulatory provisions relating to water quality-based permitting, as well as the goals and objectives of the Clean Water Act to restore and maintain the biological integrity of U.S. waters.

EPA's existing NPDES regulations require that, where a wasteload allocation has not been prepared by a state and approved by EPA under 40 CFR 130.7, water quality-based effluent limits must insure that the "level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards." 40 CFR 122.44(d)(1)(vii)(A). Consistent with this provision, water quality based effluent limits set at the water quality criteria end-of-pipe are "derived from" the applicable state water quality standards. Moreover, the water quality that would "be achieved by point sources" will be no greater than the applicable numeric water quality criteria, since all point sources will be limited to discharging at no greater than the criteria end-of-pipe. EPA recognizes that, due to contributions from nonpoint sources and other media (e.g., air deposition of mercury or PCBs), the level of a pollutant in the receiving water from all sources combined may exceed numeric water quality criteria. EPA believes that limiting discharges from point sources to criteria end-of-pipe is nonetheless appropriate in these circumstances, as discussed below.

Numeric criteria are concentration-based standards designed to protect the aquatic ecosystem and humans from the adverse effects of pollutant discharges that would occur at levels above the criteria. Where the background level of the pollutant in the receiving water is greater than the criteria, the stream is in non-attainment and the aquatic environment or human health is adversely impacted. A point source discharging at criteria end-of-pipe in such situations, however, will contain a lower concentration of the pollutant than the receiving water, and therefore will not increase the pollutant concentration in the waterway. Such a discharger may, in fact, cause the ultimate pollutant concentration in the receiving water to decrease. Where the environmental effects of a pollutant on the aquatic ecosystem or on human health are associated with the concentration of the pollutant in the waterway, limiting discharges from point sources to criteria end-of-pipe in these circumstances should therefore result in no further degradation of the waterbody, and may in fact improve the water quality of the waterbody (special environmental considerations are present with regard to bioaccumulative [persistent] compounds, which are addressed separately under the final rule and discussed further below). The Agency therefore believes that establishing limits on point sources under these circumstances at criteria end-of-pipe is consistent with the underlying environmental objectives of the CWA.

Section VIII.B: Reasonable Potential

The Agency recognizes that establishing limits at the criteria end-of-pipe will not alone result in the attainment of water quality standards in the receiving water for pollutants that are present mainly due to contributions from nonpoint sources and other media. In the absence of a TMDL addressing comprehensively such sources and corresponding controls on such sources, however, the water quality-based permitting process for point sources cannot achieve compliance with standards in such a waterbody. Even if the Agency were, for example, to prohibit discharges from point sources entirely under these circumstances, standards would not be attained in the waterbody. Indeed, where effects on aquatic life or human health are due to the concentration of the pollutant in the water column, allowing discharge at criteria end-of-pipe may actually improve water quality as compared with prohibiting any discharge at all since the former approach may ultimately reduce the pollutant concentration in the receiving water.

For the reasons explained above, EPA believes that, as an interim approach until a TMDL can be developed, establishing WOBELs to meet criteria end-of-pipe is a permissible permitting approach to address adverse environmental and health effects that are due to the concentration of pollutants in the water column in non-attained waters. Allowing such a discharge means that additional mass of a pollutant may be added to the waterbody and consideration of adverse effects due to increases in mass is well suited to the TMDL development process. In the interim before a TMDL has been established, EPA believes that any environmental concerns associated with such additions of mass can appropriately be addressed by the permitting authority through interpretation of the "toxics" narrative criterion contained in state water quality standards. For example, where an addition of mass is, in and of itself, of environmental concern because of the loadings of such pollutants in sediments, the permitting authority could interpret the narrative criterion to require more stringent limitations than criteria end-of-pipe in order to provide a requisite level of protection. Therefore, the permitting authority retains the ability to address circumstances where additions of mass alone may be of environmental concern.

While the Agency recognizes that the criteria end-of-pipe approach may not result in attainment of water quality standards in the near term on some waterbodies, the Agency views this as a reasonable interim approach to water quality-based permitting until a TMDL is developed for such waterbodies. EPA believes that the TMDL process is the appropriate means of effectively addressing ubiquitous pollutants in the Great Lakes basin where background levels exceed standards. Once a TMDL is established, point sources will have to have limits consistent with their wasteload allocation established under the TMDL (which could be lower or higher than criteria end-of-pipe). EPA recognizes, however, that TMDLs have not been established for many waterbodies where background exceeds criteria and that, given the technical difficulties and financial resources it takes to develop some TMDLs, the States will not be able to establish TMDLs everywhere they are needed in the immediate future. Under these circumstances, the Agency believes that setting wasteload allocations equal to criteria provides the best way of restricting additional discharges of pollutants from point sources in the period until a TMDL can be

developed.

EPA also examined the approach suggested by commenters to set wasteload allocations equal to background concentrations in non-attained waters in the absence of a TMDL (background end-of-pipe). EPA believes that setting limits at background for discharges to non-attained waters is not an approach that would be consistent with national program requirements under the CWA. EPA notes again that existing NPDES regulations require that, where a wasteload allocation has not been prepared by a State and approved by EPA under 40 CFR 130.7, water quality-based effluent limits must ensure that the "level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards." 40 CFR 122.44(d) (1) (vii) (A). In circumstances where a waterbody is in non-attainment for a particular pollutant, EPA believes that (with the exception of certain discharges of intake pollutants allowed under procedure 5.D and E) it would not be consistent with this provision to establish a WQBEL allowing discharges of the pollutant at levels exceeding the most stringent applicable water quality criterion. On its face, EPA believes that a WQBEL allowing discharges into a waterbody already exceeding such criteria would not ensure that the water quality achieved by point sources was either "derived from" or "complies with" applicable water quality standards. EPA also believes that such a permitting approach would be fundamentally at odds with the water quality-based permitting requirement contained in section 301(b) (1) (C) of the CWA, since such an approach would allow point sources to contribute to the excursion above water quality standards in the waterbody.

3. Consideration of Pollutants in Intake Water

a. Introduction

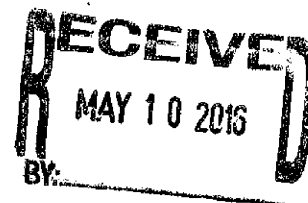
Appendix F, procedure 5.A-C, provides a means for permitting authorities to determine if a discharge causes, has the reasonable potential to cause, or contribute to an excursion above a State or Tribal numeric or narrative water quality criterion. These procedures require the permitting authority to establish a water quality-based effluent limitation (WQBEL) upon a determination that a pollutant is or may be discharged at sufficient levels to cause, have the reasonable potential to cause, or contribute to an excursion above any Tier I criterion or Tier II value.

The baseline procedures for conducting "reasonable potential" -- determinations in procedure 5.A-C do not provide special consideration for pollutants contained in a facility's intake water. Procedures 5.D and 5.E of appendix F of the final Guidance provide separate mechanisms for considering the presence of intake water pollutants in a facility's discharge when determining the need for WQBELs and in establishing such limits.

In some situations, the sole or primary origin of a pollutant in a discharge may be the intake water for a facility. For example, the origin of many pollutants in once through cooling water is the water body where the facility obtains the water rather than an industrial process or other activity



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590



MAY 05 2016

REPLY TO THE ATTENTION OF

WN-16J

Nicole Blasing, Supervisor
North Central Regional Unit, Municipal Wastewater Section
Minnesota Pollution Control Agency
7678 College Road
Suite 105
Baxter, MN 56425

Re: U.S. Environmental Protection Agency Review of the Pre-public Notice NPDES Permit,
City of Glencoe Wastewater Treatment Facility, Glencoe, Minnesota, Permit No.
MN0022233

Dear Ms. Blasing:

The U.S. Environmental Protection Agency (EPA) has reviewed the Pre-public Notice National Pollutant Discharge Elimination System (NPDES) Permit, fact sheet, and supporting documents for the City of Glencoe Wastewater Treatment Facility, Glencoe, Minnesota, MN0022233 that was initially received in February 2013, and resubmitted on August 3, 2015. On March 2, 2016, EPA received a revised permit that responded to EPA comments on the prior draft permits. Based on our review to date, EPA would not object to the issuance of that permit. Our position could change if any of the following occur:

- 1) Prior to the actual date of issuance of a Proposed Permit, an effluent guideline or standard is promulgated which is applicable to the permit and which would require revision or modification of a limitation or condition set forth in the Draft Permit;
- 2) A variance is granted and the Permit is modified to incorporate the results of that variance;
- 3) There are additional revisions incorporated into the Permit which have not been agreed to by EPA; or
- 4) EPA learns of new information, including as the result of public comments, which causes EPA to reconsider its position.

Subject to the above conditions, the permit may be issued in accordance with the Memorandum of Agreement and pursuant to the Clean Water Act.

When the Proposed Permit is prepared, please forward a copy and any significant comments received during any public notice period to r5npdes@epa.gov. Please include the EPA permit number, the facility name, and the words "Proposed Permit" in the message title. If you have any questions related to EPA's review of this permit, please contact Janet Pellegrini at (312) 886-4298 or at pellegrini.janet@epa.gov.

Thank you for your cooperation during the review process and your thoughtful consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin M. Pierard", with a stylized flourish at the end.

Kevin M. Pierard, Chief
NPDES Programs Branch

cc: Ashley Wahl, MPCA (electronically)
Gene Soderbeck, MPCA (electronically)



Minnesota Center for Environmental Advocacy

26 East Exchange Street • Suite 206 • Saint Paul, MN 55101-1667 • 651.223.5969

February 15, 2017

Ashley Wahl
ashley.wahl@state.mn.us

VIA EMAIL

Jean Coleman
Jean.Coleman@state.mn.us

**Re: Draft NPDES Permit for Glencoe, Permit No. MN0022233.
Comments of Minnesota Center for Environmental Advocacy**

Dear Ms. Wahl and Ms. Coleman,

On August 29, 2016, the Minnesota Center for Environmental Advocacy (MCEA) submitted comments on the Draft NPDES Permit for Glencoe, Permit No. MN0022233, objecting to the Minnesota Pollution Control Agency's (MPCA) failure to require compliance with a phosphorus effluent limit of 150 ug/L as a summer average because compliance with this limit is necessary to meet standards in both Buffalo Creek the South Fork Crow River.¹ MCEA also commented that a monthly average effluent limit based on a 2.1 multiplier would not ensure the discharge did not contribute to an exceedance of water quality standards.² We understand that the City of Glencoe objected to the stringency of the phosphorus effluent limits in draft permit for a variety of reasons and has sought review of the agency's decision via a petition for a contested case hearing. At this time, we are not aware that MPCA has issued a response to MCEA's comments or a decision on Glencoe's request for a contested case hearing.

We are writing to make you aware of a document we recently discovered that further supports MCEA's comments and is relevant to Glencoe's petition for a contested case hearing seeking a less stringent phosphorus limit.³ The attached letter, from the United States Environmental Protection Agency (EPA) to MPCA, provides a direct interpretation of the regulations MCEA cited in our earlier comment letter, 40 C.F.R. § 122.44(d)(1), from the agency directly charged with interpreting these federal regulations.⁴ EPA's interpretation must guide MPCA's response to comments and decision on Glencoe's request for a contested case hearing.

¹ See August 29, 2016 Letter from MCEA to Ms. Ashley Wahl, at page 5.

² Id.

³ See Minn. R. 7000.1800, Subp. 3 provides that any person may serve timely responses to a petition for a contested case hearing.

⁴ Because MPCA was aware of EPA's January 4, 2017 letter prior to issuing the final Glencoe permit, it must be included in the record supporting MPCA's final decision to issue the Glencoe NPDES permit.

First, EPA's letter clearly explains that discharges impacting waters that exceed the state's river eutrophication water quality standards, like the South Fork of the Crow River, must not exceed the water quality standard for the pollutant at issue.⁵ Because MPCA has determined that Glencoe has the reasonable potential to violate water quality standards in the South Fork of the Crow River, MPCA must include a 150 ug/L summer average phosphorus limit in Glencoe's NPDES permit to meet Clean Water Act requirements.⁶

Second, EPA's letter makes clear that if MPCA chooses to translate the 150 ug/L summer average phosphorus limit necessary to meet Clean Water Act requirements into a monthly limit, it may do so under two conditions: the MPCA must "utilize[] technically sound, defensible statistical procedures for doing so, such as the method MPCA uses for toxics. . ." and MPCA must explain the basis for how it developed the limit in a manner than is easier for the public, and EPA, to understand.⁷ EPA noted that a monthly average phosphorus limit of 530 ug/L—which is identical to the limit in the draft Glencoe permit—is "unsupported and exceeds what is required to meet the river eutrophication standards."⁸ According to EPA, MPCA's statistical procedures for toxics translate the 150 ug/L summer average limit into a monthly average phosphorus limit of 210 ug/L.

MPCA must revise the draft Glencoe permit to include a 150 ug/L summer average limit and a 210 ug/L monthly average limit. Without these limits, the permit cannot ensure compliance with river eutrophication standards applicable to Buffalo Creek and the South Fork of the Crow River and thereby violates federal Clean Water Act requirements.

Sincerely,



Kris Sigford
Water Quality Director



Betsy Lawton
Water Quality Associate

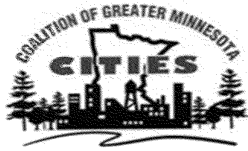
Attached: January 4, 2017 Letter from D. Scott Ireland, EPA Region 5 to Nicole Blasing, MPCA, re: *U.S. Environmental Protection Agency Review of the Pre-public Notice NPDES Permit for the City of Delano Wastewater Treatment Facility, Delano, Minnesota, Permit No. MN0051250.*

⁵ See South Fork Crow River Watershed Phosphorus Effluent Limit Analysis, Version 1.3, Matt Lindon, MPCA (July 1, 2015). Regardless there can be no doubt that Glencoe is discharging phosphorus to a reach of Buffalo Creek that exceeds the River Eutrophication Standards and the same regulatory interpretation applies.

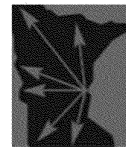
⁶ January 4, 2017 Letter from EPA to Nicole Blasing, MPCA, at 2.

⁷ Id.

⁸ Id.



Dedicated to a Strong Greater Minnesota



MESERB

Minnesota Environmental Science
and Economic Review Board

March 2, 2017

VIA EMAIL & FIRST CLASS U.S. MAIL

Mr. Robert A. Kaplan
U.S. EPA Region 5
Ralph Metcalfe Federal Building
77 West Jackson Blvd.
Chicago, IL 60604-3590

**RE: Request for Reconsideration and Rescission of U.S. EPA Region 5 Unlawful Mandate
Requiring WQBELs to be Set Equal to the WQS in the Absence of Completed TMDLs.**

Dear Administrator Kaplan:

Our organizations, the Coalition of Greater Minnesota Cities (CGMC) and Minnesota Environmental Science and Economic Review Board (MESERB), represent 93 communities in rural Minnesota, many of whom hold National Pollutant Discharge Elimination System (NPDES) permits and stand to be impacted by the implementation of the Minnesota Pollution Control Agency's (MPCA) numeric nutrient standards for rivers contained in Minnesota Rules, parts 7050.0150, .0220, and .0222, (the River Eutrophication Standards or "RES").

We write to request that you reconsider and rescind a letter sent by EPA Region 5 (Region 5) to MPCA, on January 4, 2017, in which EPA Region 5 issued an unprecedented and unlawful mandate requiring that water quality based effluent limits (WQBELs) for municipal permit holders discharging to impaired waters be set at amounts equal to the applicable water quality standard (WQS) in the absence of an applicable completed total maximum daily load study (TMDL) (*see* attached, U.S. Environmental Protection Agency Review of the Pre-public Notice NPDES Permit for the City of Delano Wastewater Treatment Facility, Delano, Minnesota, Permit No. MN0051250 ("WQBEL mandate letter" or the "mandate")). Region 5's mandate lacks support under the Clean Water Act (CWA) and constitutes an illegal legislative rule (in that it was not subjected to the requisite public rulemaking process) that will have severe negative economic impacts for local governments throughout Greater Minnesota and lead to the misuse of limited local and state clean water resources.

Our organizations have consistently supported the use of a nutrient criteria framework that is based on *recognized* stressor-response relationships using causal variables (e.g., phosphorus) and response variables (e.g., chlorophyll-a,) that are each set at levels necessary to protect designated uses. With respect to the RES, we have persistently objected to the MPCA's scientifically flawed use of

measurements of biochemical oxygen demand over a five day period (BOD5) and dissolved oxygen variation (DO flux) as primary response variables. Based on these narrow objections, we have supported a lawsuit brought by the Center of Regulatory Reasonableness in federal court, which, challenges EPA Region 5's approval of Minnesota's RES criteria (*Center for Regulatory Reasonableness, Inc., v. The United States Environmental Protection Agency*, (United States District Court, D.C. Dist. Civil Action No. 1:16-cv-01435 RJL)). That pending lawsuit is not the focus of this letter; rather, we seek herein to express our desire to avoid additional litigation and to work cooperatively with Region 5 to address our concerns with the separate issue presented by Region 5's WQBEL mandate letter.

Summary of Objections to the WQBEL Mandate Letter

We have three principal objections to the WQBEL mandate letter at issue: (1) the mandate is an unprecedented and illegal legislative rule; (2) the mandate exceeds EPA's statutory authority; and (3) the mandate clearly contradicts Region 5's previous position with respect to this exact permitting issue.

1. The mandate is an illegal legislative rule.

By requiring the MPCA to establish WQBELs equal to the RES for municipal permit holders discharging to impaired waters in the absence of an applicable completed TMDL, Region 5 established a new legislative rule without following the notice and public comment requirements of the Administrative Procedures Act. *See e.g., Iowa League of Cities v. E.P.A.*, 711 F.3d 844, 861-964 (2013). The WQBEL mandate letter states that where a permittee discharges to an impaired river or stream its "WQBEL *must* be set equal to the water quality standard criteria for the pollutant at issue, unless a Total Maximum Daily Load (TMDL) is developed and approved by EPA in accordance with CWA Section 303(d)" (WQBEL mandate letter, p. 2) (emphasis added)). There being no support for this position under the CWA, Region 5 justified its mandate by citing to EPA's *1995 Water Quality Guidance for the Great Lakes System: Supplementary Information Document ("SID")* (EPA-820-B-95-001) ("Great Lakes Guidance") (*see* WQBEL mandate letter, p. 2). This Guidance is clearly limited in application to the Great Lakes System (which does not cover the watershed at issue in the letter) and does not apply to phosphorus (the parameter at issue in the letter). *See* Great Lakes Guidance, pp. 29, 48, 54-55. The referenced Guidance explicitly states that "EPA believes it is not appropriate to apply the Guidance methodologies and implementation procedures in the case of phosphorus." *Id* at 55.

Accordingly, we are perplexed by Region 5's assertion that this Guidance—which explicitly does not apply to phosphorus—mandates that MPCA set WQBELs for *phosphorus* equal to the RES in

the absence of an applicable completed TMDL. Such a position is clearly arbitrary, unreasonable, and completely illogical.

2. The WQBEL mandate letter requires MPCA to impose permit limits that are more restrictive than necessary to meet the applicable water quality standard.

EPA's statutory authority is limited to requiring that MPCA set permit limits that are *necessary to achieve the applicable water quality standards*. See 33 U.S. Code § 1311(b)(1)(c); 40 C.F.R. § 122.44(d)(1). Nevertheless, Region 5, without a legitimate scientific or legal basis, now purports to require MPCA to issue permit limits that, according to MPCA's own water quality data and analysis, are obviously more restrictive than necessary to achieve the applicable WQS. This mandate clearly exceeds EPA's statutory authority. Furthermore, as detailed below, Region 5 previously approved the very analysis performed by MPCA that it now rejects in its WQBEL mandate letter.

3. The WQBEL mandate letter contradicts EPA Region 5's previous position.

The WQBEL mandate letter specifically addresses MPCA's Phosphorus Effluent Limit Analysis for the South Fork Crow River Watershed (SFCRW) and the calculation of a WQBEL for the City of Delano, Minnesota, which is located in the SFCRW. Region 5 previously approved a municipal NPDES permit based on the same analysis for the SFCRW (*see* attached Region 5 no objection letter regarding the City of Glencoe, Minnesota). While we are uncertain as to why Region 5 changed its position to now mandate that WQBELs in NPDES permits be set equal to the applicable WQS, we are concerned that it did so based, at least in part, on a flawed analysis provided to it by the Minnesota Center for Environmental Advocacy (MCEA), a Minnesota based environmental advocacy organization. We are concerned that Region 5 failed to adequately scrutinize MCEA's analysis and has perhaps unwittingly aided MCEA's strategy of imposing excessively restrictive effluent limits on municipalities through litigation. Tellingly, after Region 5 issued the WQBEL mandate letter, MCEA sent correspondence to MPCA demanding that Region 5's unlawful mandate apply to an ongoing administrative challenge to City of Glencoe's NPDES permit—a permit that Region 5 already reviewed and approved for issuance (*see* attached letter from MCEA regarding the draft NPDES permit for Glencoe, Minnesota (Feb. 15, 2017)).

Request for Immediate Action

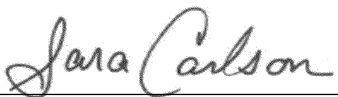
Because Region 5's WQBEL mandate letter, if heeded by MPCA, could have an immediate negative impact on our communities, we respectfully request that Region 5 reconsider and rescind its letter as soon possible. Please submit a written response to our request within 30 days by contacting our legal counsel, Daniel Marx from the law firm of Flaherty & Hood, P.A., at

Administrator Kaplan
EPA Region 5
Page 4 of 4
March 2, 2017


dmmarx@flaherty-hood.com or via telephone at 651-225-8840. If you have any questions or concerns regarding this request please contact Mr. Marx.

Thank you for your consideration.

Sincerely,



CGMC President, Sara Carlson



MESERB President, Andy Bradshaw

Attachments:

1. U.S. Environmental Protection Agency Review of the Pre-public Notice NPDES Permit for the City of Delano Wastewater Treatment Facility, Delano, Minnesota, Permit No. MNQ051250 (January 4, 2017).
2. Region 5 no objection letter regarding the City of Glencoe, Minnesota (May 15, 2016).
3. Letter from MCEA regarding the draft NPDES permit for Glencoe, Minnesota (Feb. 15, 2017).

Cc. EPA Administrator, Mr. Scott Pruitt
Mr. Don Benton, EPA
Mr. David Schnare, EPA
Mr. Scott Ireland, EPA Region 5
Ms. Rebecca Flood, MPCA
Ms. Nicole Blasing, MPCA

To: Schnare, David[schnare.david@epa.gov]
From: Bromberg, Kevin L.
Sent: Wed 3/8/2017 4:05:48 PM
Subject: Brittany

I think you mean Brittany Bolen who was (is?) on Inhofe's staff. I've met her about twice. Nothing memorable.

📧 Kevin Bromberg

Assistant Chief Counsel for Environmental Policy

📍 SBA // Office of Advocacy

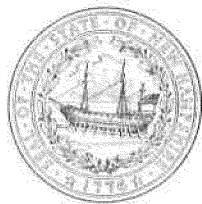
409 3rd St. SW, Washington, D.C. 20416

✉ kevin.bromberg@sba.gov 📞 202.481.2963

📞 202.205.6964



To: Schnare, David[schnare.david@epa.gov]
From: Jackson, Ryan
Sent: Fri 3/10/2017 2:31:09 PM
[Letter to Administrator Pruitt.pdf](#)
[ATT00001.txt](#)



STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

CHRISTOPHER T. SUNUNU
Governor

March 9, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt,

It was a pleasure meeting you at the White House last week during the National Governor's Association Meeting. This letter is to follow up our discussion on issues related to the Environmental Protection Agency's (EPA's) National Pollutant Discharge Elimination System (NPDES) permit program, particularly the MS4 permit for municipal storm water discharge that I believe will prove itself burdensome on many of New Hampshire's cities and towns.

On January 19, 2017, the EPA issued their updated MS4 permit for New Hampshire. The reissued permit is significantly more stringent and wide ranging than the previous one; this new permit is over 250 pages while the prior was 30 pages. The 44 New Hampshire municipalities mandated to obtain this permit face significant financial consequences. Just one example is in the City of Rochester, who is looking at compliance costs in the realm of \$25 million.

New Hampshire has long been proud and protective of our precious natural resources, including our many lakes, rivers, and bays. It is not simply federally mandated regulation that motivates our efforts in environmental preservation; our lands and waters are a fundamental part of what makes New Hampshire great and thus we prioritize their protection. Further, as a former environmental engineer, I know firsthand how important clean water is for our environment and for our public health. Even if these federal mandates disappeared tomorrow, New Hampshire would not cease to keep our waters clean.

Some regulations are understandable and reasonable. We rarely place as much trust in our government as when we turn on the tap expecting clean water. That being said, additional mandates contained within the new MS4 permit will prove themselves overly burdensome and enormously expensive for many of New Hampshire's communities. The costs to our

municipalities, our businesses, and our property owners could hold back our local economy and work to delay much of the progress we hope to achieve.

At your earliest convenience, I invite you to join me in New Hampshire for a discussion with local and state leaders who would be impacted by this new permit. I know that by listening to those on the frontlines, we can illustrate our desire to balance sensible regulation with local freedoms and responsibility.

Sincerely yours,

A handwritten signature in dark ink, reading "Chitkh T. Sununu". The signature is fluid and cursive, with the first name appearing as "Chitkh" and the last name as "Sununu".

Christopher T. Sununu
Governor

To: Schnare, David[schnare.david@epa.gov]
Cc: Richardson, RobinH[Richardson.RobinH@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]
From: Grantham, Nancy
Sent: Tue 3/7/2017 9:46:23 PM
Subject: Section 21 Petition on Tetrabromobisphenol A -- will bring you a hard copy with relevant section of the petition

Section 21 Petition on Tetrabromobisphenol A (TBBPA)

Petition from: Earthjustice, Natural Resources Defense Council. Toxic-Free Future, Safer Chemicals, Health Families, BlueGreen Alliance and Environmental Health Strategy Center.

Response Due: Sunday, March 13, 2017; our response to petitioners will go this Friday, March 10.

Background:

• On December 13, 2016, EPA received a petition under Section 21 of TSCA from Earthjustice and six other non-governmental organizations requesting that EPA order manufacturers and processors of the flame retardant Tetrabromobisphenol A ("TBBPA") to conduct certain exposure and hazard testing.

• TBBPA is primarily used as a flame retardant in circuit boards; it is also used as a flame retardant in plastics, paper and textiles; as a plasticizer in coatings and adhesives; and as an intermediate in the synthesis of other flame retardants. It is **not** used in fire-fighting/suppression products.

• TBBPA is on the TSCA work plan, but is **not** one of the first 10 chemicals for risk evaluation under the new TSCA process.

- By statute, EPA is required to respond to the petition within 90 days of receipt - on or before March 13, 2017.

Deliberative Process Privilege/Ex. 5

[Link to the petition](#)

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

To: Schnare, David[schnare.david@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Benton, Donald[benton.donald@epa.gov]
From: Connors, Sandra
Sent: Tue 3/7/2017 9:46:16 PM
Subject: Draft Hot Topics for March 8
DRAFT 3-8-2017 Daily Hot Topics.docx

David, Mike, Don and Nancy – As I will be out, I'm sharing the current draft of the Hot Topics. Justin is recused from the Wyoming Boundary case so I was not able to ascertain a better due date and thus have left it in. I know there are likely too many items on here so if you need further changes, Nancy has kindly agreed to assist.

Sandra

Sandra L. Connors
Senior Advisor

Office of the Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, Room 3317
Washington, DC 20460
(202)564-4231

connors.sandra@epa.gov

Daily Hot Topics
3-8-2017

East Chicago	<ul style="list-style-type: none"> • NRDC filed Petition on March 2, 2017 for Emergency Action under SDWA. • Requests EPA Immediately Issue SDWA 1431 Order. • Options Paper (OW, OECA and R5) under development. • Congressmen Donnelly, Young and Visclosky have invited you and Dr. Ben Carson to visit with East Chicago residents.
Pease International Tradeport	<ul style="list-style-type: none"> • Press attention to the presence of Perfluorinated Compounds (PFCs) associated with military firefighting foam at this former AFB. • Children attending day care centers located at the Tradeport found to have elevated levels of PFCs. • AF is investigating 190 bases for foam contamination and treating groundwater or bringing in water at 20 bases. • Briefing paper on PFCs under development.
Response to 10 th Circuit Tribal Boundary Decision	<ul style="list-style-type: none"> • 10th Circuit ruled in favor of Wyoming regarding boundary of the Wind River Indian Reservation. • A decision on whether to seek rehearing via letter to the SG is due by March 8.
House Transportation and Infrastructure (T&I) Hearing	<ul style="list-style-type: none"> • Hearing on water infrastructure scheduled for March 9, 2017: "Role of Federal Agencies in Building a 21st Century Water Infrastructure for America." • EPA not requested to participate in panel; Matt Klasen (OCIR Water Staff) will attend hearing. • Witnesses include: ECOS President John Stine; Mayor of Schenectady, NY (representing US Conference of Mayors); and reps from Center for American Progress and American Waterworks.
Pesticide Registration Improvement Act Reauthorization	<ul style="list-style-type: none"> • PRIA provides a pesticide fee-for-service program and current authority expires on September 30, 2017. • Legislation to reauthorize the program (PRIA 4) was introduced on February 14, 2017, by Rep. Davis (IL). This draft bill authorizes increased maintenance fees (from \$27.8M annually to \$31 M) and increases the number of fee categories. • EPA is providing technical assistance for this effort.
Transmission of Great Lakes Progress Report	<ul style="list-style-type: none"> • EPA is required to submit an annual progress report addressing the 5 focus areas in the Great Lakes Restoration Initiative Action Plan. • This report, coordinated with OW, is provided by R5 for your signature and transmission to the President and Congress via OMB.
Congressional RA Recommendations	<ul style="list-style-type: none"> • OCIR is receiving letters of recommendation for RA positions: <ul style="list-style-type: none"> - Sen. Purdue: Rick Jeffares (GA State Senator) for R4 - Rep. Gosar: Onis "Trey" Glenn III (AL DEM Director) for R4

To: Schnare, David[schnare.david@epa.gov]
From: Gordon, Rob
Sent: Fri 3/10/2017 2:05:04 PM
Subject: This morning

Personal Phone/Ex. 6 is my cell. I will get you in the lobby.

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Hull, George[Hull.George@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Gaines, Cynthia
Sent: Tue 3/7/2017 9:40:48 PM
Subject: Daily Reading File: March 7, 2017
[Daily Reading File.3.7.17.pdf](#)



Correspondence Management System

Control Number: AX-17-000-5699

Printing Date: March 07, 2017 04:06:56



Citizen Information

Citizen/Originator: Hicks, Claudia

Organization: Village of Shabbona

Address: 206 S. Blackhawk, Shabbona, IL 60550

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5699

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Mar 21, 2017

of Extensions: 0

Letter Date: Feb 27, 2017

Received Date: Mar 6, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: RA-R5-Regional Administrator - Region 5

Signature Date: N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Extremely concerned about building a new sewage treatment facility

Instructions: RA-R5-Prepare draft response for signature by the Regional Administrator for Region 5

Instruction Note: N/A

General Notes: N/A

CC: Derek Threet - AO-IO

OCIR - Office of Congressional and Intergovernmental Relations

OPA - Office of Public Affairs

ORD - Office of Research and Development -- Immediate Office

OW - Office of Water -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
StephanieN Brown	OEX	R5	Mar 7, 2017	Mar 21, 2017	N/A
Instruction: RA-R5-Prepare draft response for signature by the Regional Administrator for Region 5					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

VILLAGE OF SHABBONA

206 S. Blackhawk
Shabbona, Illinois 60550

RECEIVED

2017 MAR -6 PM 1:24

OFFICE OF THE
EXECUTIVE SECRETARIAT

Hon. Scott Pruitt
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Pruitt:

As Mayor of a small community of about 925 people, we are extremely concerned about building a new sewage treatment facility. EPA loans money, but the costs are so high that it is still almost impossible to plan for.

Our community asks that the EPA look at a variety of new and smaller treatment facilities that could be made available for smaller communities.

We would like to be considered for a demonstration project I when a small community facility is finally available.

Thank you for your consideration in this matter.

Cordially,

Claudia Hicks
Claudia Hicks,
Mayor



Correspondence Management System

Control Number: AX-17-000-5702

Printing Date: March 07, 2017 04:07:59



Citizen Information

Citizen/Originator: Stedman, Bert

Organization: Alaska State Legislature
Address: 1292 Sadler Way, Fairbanks, AK 99701

Bishop, Click

Organization: Alaska State Legislature
Address: 1292 Sadler Way, Fairbanks, AK 99701

Coghill, John

Organization: Alaska State Legislature
Address: 1292 Sadler Way, Fairbanks, AK 99701

Kelly, Pete

Organization: Alaska State Legislature
Address: 1292 Sadler Way, Fairbanks, AK 99701

MacKinnon, Anna

Organization: Alaska State Legislature
Address: 1292 Sadler Way, Fairbanks, AK 99701

Giessel, Cathy

Organization: Alaska State Legislature
Address: 1292 Sadler Way, Fairbanks, AK 99701

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number:	AX-17-000-5702	Alternate Number:	N/A
Status:	Pending	Closed Date:	N/A
Due Date:	Mar 21, 2017	# of Extensions:	0
Letter Date:	Feb 20, 2017	Received Date:	Mar 6, 2017
Addressee:	AD-Administrator	Addressee Org:	EPA
Contact Type:	LTR (Letter)	Priority Code:	Normal
Signature:	RA-R10-Regional Administrator - Region 10	Signature Date:	N/A
File Code:	404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.		
Subject:	DRF - Requesting that the United States Army Corps of Engineers return to correctly using the 1987 Wetlands Delineation Manual in Alaska		
Instructions:	RA-R10-Prepare draft response for signature by the Regional Administrator for Region 10		
Instruction Note:	N/A		
General Notes:	N/A		
CC:	Derek Threet - AO-IO OCIR - Office of Congressional and Intergovernmental Relations OPA - Office of Public Affairs OW - Office of Water -- Immediate Office		

Lead Information



Correspondence Management System

Control Number: AX-17-000-5702

Printing Date: March 07, 2017 04:07:59



Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
StephanieN Brown	OEX	R10	Mar 7, 2017	Mar 21, 2017	N/A
	Instruction: RA-R10-Prepare draft response for signature by the Regional Administrator for Region 10				
Linda Tyson	R10	R10-OERA	Mar 7, 2017	Mar 17, 2017	N/A
	Instruction: **COMPLEX RESPONSE for RA SIGNATURE** Please submit response for RA review and signature no later than 3/17/2017. OERA is the primary responding office. AOO IS FYI/CCs only. Once the final letter has been reviewed by your OD, please save a copy in the G-Drive CMS folder (G:\Baker\CMS) and send an email to R10-ORA@epa.gov that a CMS is ready for the RA's review & signature. Please DO NOT attach the letter to the email. For questions about the scope or content of the response, please contact Marianne Holsman or Dan Opalski.				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
Linda Tyson	R10	R10-AOO	Mar 7, 2017

History

Action By	Office	Action	Date
StephanieN Brown	OEX	Control Created	Mar 7, 2017
StephanieN Brown	OEX	Assign R10 as lead office	Mar 7, 2017
Linda Tyson	R10	Accepted the group assignment	Mar 7, 2017
Linda Tyson	R10	Assign R10-OERA as lead office	Mar 7, 2017
Linda Tyson	R10	Assign R10-AOO to support the control	Mar 7, 2017
Christinem Kelly	R10-OERA	Accepted the group assignment	Mar 7, 2017

Comments

Commentator	Comment	Date
No Record Found.		

Alaska State Legislature



February 20, 2017

The Honorable Lisa Murkowski
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Dan Sullivan
United States Senate
702 Hart Senate Office Building
Washington, DC 20510

The Honorable Don Young
United States House of Representatives
2314 Rayburn House Office Building
Washington, DC 20515

Commanding General and Chief of
Engineers Todd T. Semonite
Headquarters
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

Col. Michael Brooks
U.S. Army Corps of Engineers – Alaska
District
P.O. Box 6898
JBER, Alaska 99506-0898

Administrator Scott Pruitt
Environmental Protection Agency, 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

OFFICE OF THE
EXECUTIVE SECRETARIAT

2017 MAR -6 PM 1:23

RECEIVED

Re: Use of the *Wetlands Delineation Manual*, Technical Report Y-87-1, January 1987, Final Report (1987 Manual).

Dear Honorable Ladies and Gentleman:

In President Trump's spirit of de-regulation (particularly with regulations and policies that don't work), the below signatories respectfully request that the United States Army Corps of Engineers (Corps) return to correctly using the 1987 Wetland Delineation Manual (1987 Manual) in Alaska.¹ Respectfully, perhaps the Alaska delegation, via an appropriations bill, can require the Corps to only use the 1987 manual to delineate wetlands. A similar approach was taken by Congress in 1991-1993.²

¹ United States Army Corps of Engineers, *Wetland Delineation Manual*, Y-87-1 (January 1987).

² See S.Rep. No. 102-344 (1992).

The reason is simple: For too long throughout the state, the Corps has incorrectly determined that permafrost areas are “wetlands” subject to jurisdiction under the Clean Water Act (CWA).³

Make no mistake: The Corps is a respected agency in the federal government. Their expertise and civil projects can be seen from coast to coast. The Corps has helped create safer communities, while making valuable contributions to a national economic engine that is unparalleled in the world.⁴

However, not all Corps actions have been perfect. Wetland delineation in Alaska is a good example of an “area in need of improvement.” Quite simply: despite interpretations from regional supplements (produced in violation of the Administrative Procedure Act (APA)),⁵ permafrost areas are not “wetlands.”

The U.S. Army Corps of Engineers general regulatory functions were formerly financed as part of the “Operation and maintenance, general appropriation” account. The appropriation recommended provides salaries, expenses, and related costs to administer laws pertaining to regulation of navigable waters and wetlands of the United States in accordance with the River and Harbors Act of 1899, the Clean Water Act of 1977, and the Marine Protection Act of 1972.

The Committee is pleased to note a significant decline in the number of complaints about wetlands delineations since the Corps of Engineers has been using the 1987 guidelines for determining Federal jurisdictional wetlands, and agrees with the Corps that these Corps guidelines should continue to be used until a subsequent delineation manual is finally adopted in accordance with the requirements for notice and public comment of the Administrative Procedure Act.

The Committee notes that these guidelines were developed by the Corps over a 10-year period at a cost of \$5,000,000 and were subjected to extensive field testing before being placed in service by the Corps. The Committee further notes that this level of review and analysis has not occurred with any subsequent manual.

The Committee believes that most of the problems with the current 404 program occur when policy decision are made outside the normal notice and public comment process. This is understandable in light of the fact that up to 75 percent of the land regulated under this program is privately owned.

The Committee is concerned about continuing complaints over the hardships being experienced under the practicable alternatives test that was adopted by the Corps in a February 7, 1990, memorandum of agreement with the Environmental Protection Agency. The practicable alternatives test as well as the traditional public interest test both must not be satisfied before a 404 permit can be obtained. The rigid test has led to the denial of permits in some cases because the applicant could not prove that there were no other alternatives available. The test is not necessarily limited by geographic area and does not even require that the applicant own or have access to the land that the Environmental Protection Agency or Corps of Engineers might think is a valid alternative. *Id.* at pages 55-56.

³ 33 U.S.C. §1251 et seq. (1972).

⁴ Historic efforts by the Corps during World War II allowed for dam construction, which created an abundance of electricity, which was harnessed in production of aircraft and ships on the West Coast. Many say, because of the underlying activities of the Corps, the War was shortened by two years or more.

⁵ 5 U.S.C. §§ 551-59, 701-06, 1305, 3105, 3344, 5372, 7521(2012). Noteworthy: Historically, the Corps was directed by Congress to use the 1987 Manual as the exclusive method to delineate wetlands. That was required until the Corps Letter from Alaska Senate Majority Members

Re: Use of the *Wetlands Delineation Manual*, Technical Report Y-87-1, January 1987, Final Report (1987 Manual).
Page 2 of 4

Why?

Permafrost is cryogenically isolated. Soil temperatures remain cold. In addition, permafrost does not have a significant, continuing nexus to other water. As most Alaskans know, permafrost does not contribute consistent flow to traditionally defined navigable surface waters (or other jurisdictional surface waters), because, as the name suggests, permafrost is frozen material underlying the upper layers of a soil profile.

Permafrost would never qualify as a “wetland” under the 1987 Manual. Permafrost simply cannot satisfy the hydrology parameter.

Despite that history, many Alaskans are concerned with the way the Corps has interpreted specific directions from Congress. There has been no adoption of a final manual (since the 1987 Manual). The Corps has, instead, retained the 1987 Manual while using regional supplements and “informal guidance” to supersede portions that limit jurisdiction.

The result?

Shallow permafrost is delineated as wetlands. That means vast expanses of the state, amounting to millions of acres, are subject to federal regulation. Property owners face significantly greater hurdles to develop their land.⁶ Expensive lawsuits have ensued.⁷

That’s bad policy. Bad policy that unnecessarily hampers Alaska’s good faith development of its property.

President Trump has made overtures that he is committed to de-regulation, smart-regulation, infrastructure, and energy development. Please take our request under consideration, to once again unlock the capital dollars that will add value to America’s bottom line.

A small step in the right direction would be returning to the 1987 Manual.

went through the notice-and-comment rule-making procedures of the APA to adopt a new, final wetland delineation manual. Presently, that procedure has not occurred.

⁶ Please also consider enacting a statute returning the scope and jurisdiction of the Corps for purposes of the section 404 permit program to an earlier and more traditional definition of “navigable waters.” That definition is: (1) all waters presently and actually being used to transport interstate or foreign commerce; (2) all waters used in the past to transport interstate or foreign commerce; (3) all waters susceptible to use to transport interstate or foreign commerce; and (4) all waters subject to the ebb and flow of the tide, to the mean high water mark. *See* 42 Fed. Reg. Vol. 42, No. 138, p. 37122, Tuesday, July 19, 1977. This also returns the jurisdiction of the Corps 404 permit program to a scope in line with the Tenth Amendment and state rights to regulate intrastate commerce. If states want to regulate development of “fill” type activities in waters not covered by the federal government, they are free to do so, under the rules they choose.

⁷ *See* <https://www.pacificlegal.org/releases/release-5-3-16-tin-cup-1-1509>. *See Tin Cup, LLC v. United States Army Corps of Engineers*, 4:16-cv-00016-TMP.

Letter from Alaska Senate Majority Members

Re: Use of the *Wetlands Delineation Manual*, Technical Report Y-87-1, January 1987, Final Report (1987 Manual).

Page 3 of 4

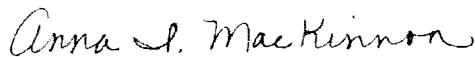
Sincerely,



Senate President Pete Kelly



Senator John Coghill



Senator Anna MacKinnon



Senator Bert Stedman



Senator Click Bishop



Senator Cathy Giessel

cc: President Donald J. Trump
Governor William "Bill" Walker
Deantha Crockett, Alaska Miners Association



Correspondence Management System

Control Number: AX-17-000-5703

Printing Date: March 07, 2017 02:38:16



Citizen Information

Citizen/Originator: Minge, John C.

Organization: BP America, Inc.

Address: 501 Westlake Park Boulevard, Houston, TX 77079

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5703

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Mar 22, 2017

of Extensions: 0

Letter Date: Feb 22, 2017

Received Date: Mar 6, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: LTR (Letter)

Priority Code: Normal

Signature: AD-Administrator

Signature Date: N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Looking forward to working with the Administrator and the agency on regulatory reforms

Instructions: AD-Prepare draft response for the Administrator's signature

Instruction Note: N/A

General Notes: Copy was provided to Aaron Dickerson to handle the meeting request (jl)

CC: Kristien Knapp - AO-IO
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OAR	Mar 7, 2017	Mar 22, 2017	N/A
Instruction: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR					
Barbara Matthews	OAR	OAR-OTAQ	Mar 7, 2017	Mar 17, 2017	N/A
Instruction: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR					

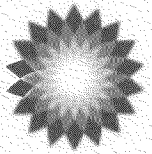
Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History



John C. Mingé

Chairman & President

RFCEIV

2017 MAR -6 PM 1:23

OFFICE OF THE
EXECUTIVE SECRETARY

February 22, 2017

BP America, Inc.
501 Westlake Park Blvd.
Houston, TX 77079
USA
Direct: 281-892-5419
Main: 281-366-2000
Fax: 281-366-8460

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

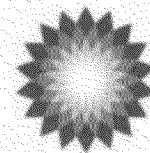
Dear Mr. Administrator:

On behalf of everyone at BP, I would like to congratulate you on your confirmation by the U.S. Senate as Administrator of the Environmental Protection Agency. Our company looks forward to providing whatever assistance we can to you and your team as you develop policies that help protect the environment while expanding economic prosperity.

As America's largest energy investor over the past decade—with about \$90 billion invested between 2007 and 2016—BP has operations everywhere from Alaska to South Carolina. We have an especially large and growing presence in your home state of Oklahoma, where we are a leading producer of natural gas in the Arkoma, Woodford and Anadarko basins. Our experience in Oklahoma and other states has confirmed that energy production and environmental protection are not mutually exclusive. We can have effective regulations based on sound science, while also realizing the full potential of our country's abundant resources.

With those goals in mind, BP will continue advocating sensible, pro-growth regulatory reforms in 2017 and beyond. In particular, we would like to see a comprehensive reform of the Renewable Fuel Standard; a streamlining of the oil and gas permitting process under the National Environmental Policy Act; and a thorough review of EPA's planned existing source rule on methane emissions. We look forward to working with your agency in each of these areas.

I was encouraged by a number of the points you made during your confirmation hearing, including your statement that EPA must inspire confidence, trust and a sense of certainty among those it regulates. As you put it, the proper role of a regulator is to "make things regular." BP agrees that, if EPA implements stable,



predictable policies within the authority provided by Congress, it will enjoy a productive relationship with regulated industries, which will yield both environmental and economic benefits. I also was struck by your comment that "cooperative federalism" should take the place of "coercive federalism." BP shares your view that it would be healthy to give more decision-making power to the states.

EPA is one of our most important regulators, and I would welcome the opportunity to meet with you in person to discuss these and other matters. I will be in Washington, D.C., between March 13 and March 22, and I could come to your office if you are available for a brief chat. I recognize, of course, that the beginning of a new administration is a very busy period, but I do hope we can get together sometime soon.

Congratulations again on your confirmation, and I wish you every success in your new position

Sincerely,

John Mingé
Chairman and President, BP America

P.S. I loved
the Article in
the WSJ this past
weekend - very clear!
Jcm



Correspondence Management System

Control Number: AX-17-000-5761

Printing Date: March 07, 2017 02:46:27



Citizen Information

Citizen/Originator: Tippets, John H.

Organization: State of Idaho Department of Environmental Quality
Address: 1410 North Hilton, Boise, ID 83706

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5761 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Mar 22, 2017 **# of Extensions:** 0
Letter Date: Feb 28, 2017 **Received Date:** Mar 7, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: RA-R10-Regional Administrator **Signature Date:** N/A
- Region 10
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Request for Approval of Idaho's Revised Water Quality Standards, Human Health Criteria
Instructions: RA-R10-Prepare draft response for signature by the Regional Administrator for Region 10
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OPA - Office of Public Affairs
OW - Office of Water -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	R10	Mar 7, 2017	Mar 22, 2017	N/A
Instruction: RA-R10-Prepare draft response for signature by the Regional Administrator for Region 10					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502
www.deq.idaho.gov

C.L. "Butch" Otter, Governor
John H. Tippetts, Director

February 28, 2017

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue Mail Code: 1101A Washington D.C. 20460

Re: Request for Approval of Idaho's Revised Water Quality Standards,
Human Health Criteria

Dear Administrator Pruitt:

I am writing to request that the EPA formally approve the revised water quality standards, Human Health Criteria update (HHC) that the Idaho Department of Environmental Quality (IDEQ) submitted to EPA Region 10 for approval on December 13, 2016. The package of supporting material submitted at that time (and enclosed with this letter) demonstrates that the revised HHC meet all required statutory and regulatory requirements for approval.

As you have emphasized throughout your career and upon taking the helm at EPA, the nation's environmental laws, including the Clean Water Act (the Act), are built on the principle of cooperative federalism. Under the CWA, states have the primary responsibility to develop water quality standards, including the criteria necessary to protect the designated uses of the waters of the state. While EPA issues recommended national HHC pursuant to Section 304(a) of the Act, those criteria are only guidance and states should adapt them as needed to protect their waters. The states' criteria must protect the designated use and be based on "sound scientific rationale" (40 C.F.R. § 131.11(a)). Finally, under existing regulations (40 C.F.R. § 131.11(b)), states may adopt the EPA national criteria; modify the national criteria to reflect site-specific conditions; or develop other "scientifically defensible" criteria.

The revised HHC IDEQ submitted for approval were developed through an open, transparent stakeholder process that took several years. IDEQ made available the data and scientific support for its HHC throughout that process, as well as the rationale for the policy choices it made—choices clearly left to the discretion of the states under the Act, EPA rules and guidance. The process culminated with the approval of the HHC Rule before the Idaho Board of Environmental Quality in December 2015 and the Idaho Legislature, in 2016.

In a January 19th letter, the then-EPA Regional Administrator responded to IDEQ informing the agency that EPA had serious concerns with the revised HHC and questioned whether the package was approvable. The letter raised a number of concerns about tribal treaty rights, the proper calculation of fish consumption rates, IDEQ risk policy choices and other aspects of the HHC. Many of those concerns are based on arguments with no legal foundation in the Act or on disagreements with IDEQ's policy choices. However, the "Idaho Human Health Criteria Update

The Honorable Scott Pruitt
February 28, 2017
Page 2 of 2

Justification and Compliance with the Clean Water Act" document included as part of the submittal more than adequately addresses the concerns included in EPA's letter.

The concerns raised by EPA regarding Idaho's HHC are very similar to those raised by EPA when it disapproved HHC adopted by Washington and Maine. Like Idaho, Washington and Maine developed HHC in accordance with the CWA, federal regulations and EPA national guidance. Nevertheless, EPA disapproved the criteria and based its disapproval on the rejection of policy choices allowed States under the law. Petitions have been filed in both Washington and Maine asking EPA to withdraw its disapproval.

Thank you for your consideration of Idaho's request for approval of our revised HHC. We look forward to hearing from you soon, and to working cooperatively with you and your staff in the future.

Sincerely,



John H. Tinnets
Director

JHT:ra

Enclosures

c: Michelle L. Pirzadeh, EPA Region 10 Acting Administrator

To: Schnare, David[schnare.david@epa.gov]
From: Brooks, Phillip
Sent: Fri 3/10/2017 1:50:06 PM
Subject: if you have a moment to talk, I am at 564-0652. Not urgent

To: Dickerson, Aaron[dickerson.aaron@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]
From: Julia Anastasio
Sent: Tue 2/28/2017 6:06:05 PM
Subject: INVITATION: ACWA 2017 Mid-Year Meeting
Adm Pruitt MYM Invitation FINAL.pdf

Dear Mr. Dickerson:

I recently learned that you have been hired as the scheduler for Adm. Pruitt. Congratulations!

We sent the attached letter inviting Administrator Pruitt to our upcoming spring meeting on February 21, 2017. I thought I would take this opportunity to resend the letter now that you are on board.

Please feel free to reach out with any questions and thank you for considering this request.

Julia

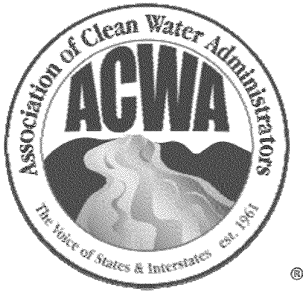
Julia Anastasio

Executive Director & General Counsel

Association of Clean Water Administrators

202.756.0600 (O)

202.746.8017 (c)



Board of Directors & Officers

President, **Peter LaFlamme**
Director, Watershed Management
Division, Vermont Department of
Environmental Conservation

Vice President, **Jennifer Wigal**
Water Quality Program Manager,
Oregon Department Environmental
Quality

Treasurer, **Carlton Haywood**
Executive Director, Interstate
Commission on the Potomac
River Basin

Secretary, **Allison Woodall**,
Special Assistant, Texas Commission
on Environmental Quality

Past President, **Martha Clark Mettler**
Assistant Commissioner, Office of
Water Quality, Indiana Department of
Environmental Management

Regional Representatives

Region I - **Alicia Good** (RI)
Region II - **Leslie McGeorge** (NJ)
Region III - **Melanie Davenport** (VA)
Region IV - **Peter Goodman** (KY)
Region V - **Rebecca Flood** (MN)
Region VI - **Allison Woodall** (TX)
Region VII - **Jaime Gaggero** (KS)
Region VIII - **Kent Woodmansey** (SD)
Region IX - **Krista Osterberg** (AZ)
Region X - **Heather Bartlett** (WA)
Interstates - **Susan Sullivan** (NEIWPC)

Executive Director & General Counsel
Julia Anastasio

February 21, 2017

Scott Pruitt
Administrator, U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code: 1101A
Washington, DC 20460

Dear Administrator Pruitt:

Congratulations on your recent appointment as the Administrator of the U.S. Environmental Protection Agency! The members of the Association of Clean Water Administrators (ACWA) wish you the best in your new role and look forward to establishing a productive relationship built on the principles of cooperative federalism with you and the new Administration.

I am pleased to extend an invitation to you to speak at the **ACWA 2017 Mid-Year Meeting**, March 20-21, 2017. In particular, we would be honored if you could kick-off our meeting by introducing yourself to the members of ACWA and providing an overview of your priorities for the agency **on March 20, 2017 at 9:00 AM** and stay for as much of the rest of the meeting as your schedule allows.

The meeting will be held at the *Hilton Garden Inn, Washington DC/ US Capitol, 1225 First St NE, Washington, DC*. This year's agenda is focused on identifying shared priorities for water quality programs between the states and interstates and the EPA. We anticipate approximately 100 attendees representing state clean water program administrators, some of their staffs and representatives from the Office of Water.

Founded in 1961, the ACWA is the independent, nonpartisan, national organization of state, interstate, and territorial water program managers, who on a daily basis implement the water quality programs of the federal Clean Water Act ("CWA"). States are responsible, under the federal CWA and under a state's own laws and regulations, to

1634 EYE Street, NW, Ste. # 750, Washington, DC 20006
TEL: 202-756-0605

WWW.ACWA-US.ORG

ED_001612_00029638-00001

advance the attainment of clean and healthy waters and to prevent violations of the water quality standards designed to support these goals.

Please let us know at your earliest opportunity about your availability for this speaking engagement. We look forward to having you join us on March 20, 2017. If your schedule does not allow for your participation, we would appreciate it if you assigned this engagement to someone on your staff. Please also feel free to call me at 202.756.0600 should you have any questions or require further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julia Anastasio".

Julia Anastasio
ACWA Executive Director & General Counsel

Cc: David W. Schnare, Esq. Ph.D., Counsel to the Senior White House Adviser
Robin H Richardson, Principal Deputy Associate Administrator, US. EPA
Mike Shapiro, Acting Deputy Administrator, Office of Water
Ann Campbell, Managing Director, Office of Water
Shellie Chard, Division Director, Water Quality Division, Oklahoma Department
of Environmental Quality

1634 EYE Street, NW, Ste. # 750, Washington, DC 20006
TEL: 202-756-0605

WWW.ACWA-US.ORG

ED_001612_00029638-00003

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]
From: Benton, Donald
Sent: Fri 3/3/2017 9:54:23 PM
Subject: FW: (For EPA ADMINISTRATOR PRUITT) CCAGW Letter in re West Lake Landfill
West Lake Landfill.docx
Attachments for West Lake Landfill letters.docx

RJ,

I am sure you are familiar with this issue since it passed out of the Senate Committee and the Senate. I wanted you and the Administrator to be aware of this issue, especially if he goes to St. Louis as it could come up as a question.

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: William Christian [mailto:wchristian@cagw.org]
Sent: Friday, March 3, 2017 2:57 PM
To: Benton, Donald <benton.donald@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: derrick.dockery@mail.house.gov; 'Suarez, Erica (McConnell)' <Erica_Suarez@mcconnell.senate.gov>
Subject: (For EPA ADMINISTRATOR PRUITT) CCAGW Letter in re West Lake Landfill
Importance: High

March 3, 2017

The Honorable Scott Pruitt

Administrator

United States Environmental Protection Agency

1200 Pennsylvania Avenue, N.W.

Washington, D.C. 20460

Dear Administrator Pruitt:

In 1974, the West Lake Landfill, located near Lambert International Airport in St. Louis, Missouri, was closed. In 1990, the landfill was added to the National Priorities List, and in 2008, after 15 years of testing and analysis by the Environmental Protection Agency (EPA), the agency issued a Record of Decision to place five feet of crushed rock, clay, and soil on top of the site, which would encapsulate the area and prevent any human contact. Private parties agreed to pay for this remediation work. In 2015, federal and state agencies determined that the site poses no public health or safety risk despite the fact there is some radiological material present.

- The Centers for Disease Control and Prevention reported that groundwater, air, and soil data do not indicate a health risk to surrounding communities.
- The EPA determined that there is no off-site risk from contamination.
- The Missouri Department of Health and Senior Services reported that anything detected in the ambient air and landfill gas is below levels of public health concern.
- The Missouri Department of Natural Resources said that field screening observations did not identify any areas of health and safety concern.

On December 9, 2015, the EPA issued its “approved statement of work for Remedial Investigation Addendum and Final Feasibility Study.” The work would include a cleanup of the area and the erection of an isolation barrier between West Lake and the nearby Bridgeton Landfill, which had experienced a subsurface chemical reaction related to the kind of waste materials that were placed there that is now under control.

The EPA plan requires that private landowners cover the costs of both activities. All work was supposed to have been completed by the end of 2016.

Despite the work that had been done to finalize the remediation and cleanup, Sens. Roy Blunt (R-Mo.) and Claire McCaskill (D-Mo.) introduced S. 2306, which would undo the EPA’s agreement in three critical ways. First, the project would be led by the Army

Corps of Engineers rather than the EPA. Second, a new assessment of the project would be required, which could delay any action for 10 years. Third, the entire \$400 million in costs would be shifted to U.S. taxpayers.

On February 2, 2016, the Senate Committee on Environment and Public Works discharged S. 2306 by unanimous consent, and the bill was agreed to by unanimous consent by the full Senate on the same date. There were no hearings, markups or critical evaluation of the legislation.

The "remedy" in S. 2306 creates a risky precedent for future cleanup efforts by shifting responsibility from private owners to the public sector without any public health or safety benefit. We appreciate your attention to this matter and your review of the attached material regarding this project.

Please feel free to contact me or my staff if you have any questions or wish to discuss this issue in more detail.

Sincerely,

A handwritten signature in black ink that reads "Tom Schatz". The signature is written in a cursive, slightly slanted style.

President

Council for Citizens Against Government Waste

cc: Hon. Mick Mulvaney, Director of the Office of Management and Budget

Hon. James Mattis, Secretary of Defense

Hon. Ryan Zinke, Secretary of the Interior

Hon. Paul Ryan, Speaker of the House of Representatives

Hon. Mitch McConnell, Majority Leader of the Senate

Attachments

WILLIAM M. CHRISTIAN | Director of Government Affairs

1100 Connecticut Avenue, NW, Suite 650 | Washington, DC 20036

Office: 202.467.5300 | Mobile: 202.746.BILL (2455) | Fax: 202.467.4253 | www.cagw.org



CONFIDENTIALITY NOTICE:

This e-mail and any attachments contain information from Citizens Against Government Waste and are intended solely for the use of the named recipient or recipients. Any dissemination of this e-mail by anyone other than an intended recipient is strictly prohibited. If you are not a named recipient, you are prohibited from any further viewing of the e-mail or any attachments or from making any use of the e-mail or attachments. If you believe you have received this e-mail in error, notify the sender immediately and permanently delete the e-mail, any attachments, and all copies thereof from any drives or storage media and destroy any printouts of the e-mail or attachments

Attachments for CCAGW Letter (March 3, 2017)

January 31, 2016

Iain Murray, Competitive Enterprise Institute

National Review, "West Lake Landfill Boondoggle Another Nail in the Coffin of Superfund"

<http://www.nationalreview.com/corner/430558/west-lake-landfill-boondoggle-superfund>

February 2, 2016

Andrew Langer, Institute for Liberty

The American Spectator, "Cronyism and the Bureaucratic Reset Button"

https://spectator.org/65353_cronyism-and-bureaucratic-reset-button/

February 5, 2016

John Fund, National Review

Newsmax.com, "Feds Drop the Ball on Superfund Site"

<http://www.newsmax.com/JohnFund/Army-Corps-Engineers-EPA/2016/02/05/id/712903/>

March 17, 2016

Andrew Quinlan, Center for Freedom and Prosperity

The Blaze, "Manhattan Project Radioactive Landfill Needs Action, Not More Politics"

<http://www.theblaze.com/contributions/manhattan-project-radioactive-landfill-needs-action-not-more-politics/>

May 9, 2016

Crystal Wright, Conservative Black Chick blog

Breitbart.com, "Sen. Claire McCaskill Wants to Help Teamsters Waste \$400M on Missouri Landfill

Clean Up" <http://www.breitbart.com/big-government/2016/05/09/senator-claire-mccaskill-helps-teamsters-waste-400-million-missouri-landfill-clean/>

November 10, 2016

Charlie Sauer

Washington Examiner, "Environmental Activists Fighting the EPA Deny Science, Oppose Progress"

<http://www.washingtonexaminer.com/article/2607099>

November 14, 2016

Crystal Wright

CNS News, "Just Moms STL, Concerned Moms or Pay for Play Cover for the Teamsters"

<http://www.cnsnews.com/commentary/crystal-wright/just-moms-stl-concerned-moms-or-pay-play-cover-teamsters-create-union-jobs>

December 8, 2016

Seton Motley

RedState, [A Chance for Congress to Kill Some Cronyism](#)



March 3, 2017

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Pruitt:

In 1974, the West Lake Landfill, located near Lambert International Airport in St. Louis, Missouri, was closed. In 1990, the landfill was added to the National Priorities List, and in 2008, after 15 years of testing and analysis by the Environmental Protection Agency (EPA), the agency issued a Record of Decision to place five feet of crushed rock, clay, and soil on top of the site, which would encapsulate the area and prevent any human contact. Private parties agreed to pay for this remediation work. In 2015, federal and state agencies determined that the site poses no public health or safety risk despite the fact there is some radiological material present.

- The Centers for Disease Control and Prevention reported that groundwater, air, and soil data do not indicate a health risk to surrounding communities.
- The EPA determined that there is no off-site risk from contamination.
- The Missouri Department of Health and Senior Services reported that anything detected in the ambient air and landfill gas is below levels of public health concern.
- The Missouri Department of Natural Resources said that field screening observations did not identify any areas of health and safety concern.

On December 9, 2015, the EPA issued its “approved statement of work for Remedial Investigation Addendum and Final Feasibility Study.” The work would include a cleanup of the area and the erection of an isolation barrier between West Lake and the nearby Bridgeton Landfill, which had experienced a subsurface chemical reaction related to the kind of waste materials that were placed there that is now under control.

The EPA plan requires that private landowners cover the costs of both activities. All work was supposed to have been completed by the end of 2016.

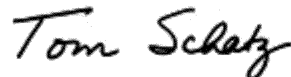
Despite the work that had been done to finalize the remediation and cleanup, Sens. Roy Blunt (R-Mo.) and Claire McCaskill (D-Mo.) introduced S. 2306, which would undo the EPA’s agreement in three critical ways. First, the project would be led by the Army Corps of Engineers rather than the EPA. Second, a new assessment of the project would be required, which could delay any action for 10 years. Third, the entire \$400 million in costs would be shifted to U.S. taxpayers.

On February 2, 2016, the Senate Committee on Environment and Public Works discharged S. 2306 by unanimous consent, and the bill was agreed to by unanimous consent by the full Senate on the same date. There were no hearings, markups or critical evaluation of the legislation.

The “remedy” in S. 2306 creates a risky precedent for future cleanup efforts by shifting responsibility from private owners to the public sector without any public health or safety benefit. We appreciate your attention to this matter and your review of the attached material regarding this project.

Please feel free to contact me or my staff if you have any questions or wish to discuss this issue in more detail.

Sincerely,

A handwritten signature in black ink that reads "Tom Schatz". The signature is written in a cursive, slightly slanted style.

cc: Hon. Mick Mulvaney, Director of the Office of Management and Budget
Hon. James Mattis, Secretary of Defense
Hon. Ryan Zinke, Secretary of the Interior
Hon. Paul Ryan, Speaker of the House of Representatives
Hon. Mitch McConnell, Majority Leader of the Senate

Attachments

To: Schnare, David[schnare.david@epa.gov]; Benton, Donald[benton.donald@epa.gov]
From: Munoz, Charles
Sent: Mon 1/30/2017 12:20:48 PM
Subject: EPA: Agency awaiting Pruitt plans to give climate awards -- Friday, January 27, 2017 --
www.eenews.net E&E News -- Start a free trial

FYI - we should look into this awards show sponsorship.

<http://www.eenews.net/climatewire/2017/01/27/stories/1060049088>

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: Flynn, Mike
Sent: Fri 3/10/2017 12:03:47 PM
Subject: Fwd: Out tomorrow - Item for 3pm

FYI for this afternoon.

Mike Flynn
Acting Deputy Administrator
U.S. Environmental Protection Agency
(202) 564-4711

Begin forwarded message:

From: "Richardson, RobinH" <Richardson.RobinH@epa.gov>
Date: March 9, 2017 at 7:31:38 PM EST
To: "Flynn, Mike" <Flynn.Mike@epa.gov>
Subject: Out tomorrow - Item for 3pm

Hi Mike – Unfortunately I'm out tomorrow. For now, other than the LRM feedback, there is one item I'd bring up at the 3pm Hot Topics meeting...

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

I'll have my phone with me and will stay in touch. I won't be at the scheduling meeting but have coordinated with Nancy and I'll follow up with her after the meeting.

Thank you! Robin

Robin H Richardson

Principal Deputy Associate Administrator

Office of Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-3358 (desk)

703-581-5814 (cell)

richardson.robinh@epa.gov

To: Schnare, David[schnare.david@epa.gov]
From: Minoli, Kevin
Sent: Fri 3/3/2017 9:41:50 PM
Subject: Great. Thanks. N/m Re: CAFE FR Notice

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Mar 3, 2017, at 3:00 PM, Schnare, David <schnare.david@epa.gov> wrote:

Thanks. I took all edits.

d

From: Minoli, Kevin
Sent: Friday, March 3, 2017 2:41 PM
To: Schnare, David <schnare.david@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: CAFE FR Notice

David- As requested, here are our suggested edits on the NHTSA version. This version includes the edits from OAR and OGC. Please let us know if you have questions on any of them. Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Schnare, David

Sent: Wednesday, March 01, 2017 2:45 PM

To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>

Cc: Jackson, Ryan <jackson.ryan@epa.gov>

Subject: CAFE FR Notice

Kevin & Sarah:

Deliberative Process/Attorney Client Privilege/Ex. 5

dschnare

To: Dravis, Samantha[dravis.samantha@epa.gov]; Benton, Donald[benton.donald@epa.gov];
Schnare, David[schnare.david@epa.gov]
Cc: Campau, Anthony P. EOP/OMB [EOP/Ex. 6]
From: Williams, Michael B. EOP/OMB
Sent: Fri 3/3/2017 9:24:47 PM
Subject: Reg Review Call Follow-up
EPA Reg Tracker Summary 20170303.xlsx

Hi all,

Thanks for a productive call earlier. As promised, please find attached an updated reg spreadsheet, with OIRA comments where applicable, and one new reg we're tracking (highlighted in red, row 15). Please also see OIRA's comment on the CAA Risk Management Program at row 18.

Best,

Michael

Michael B. Williams

Legal

Office of Management and Budget

(c) [EOP/Ex. 6]

DEPARTMENT	Re	SUBJECT
EPA	Permit	General Permit
EPA	Permit	General Permit
EPA	Regulatory Action	Water
EPA	Other	Water
EPA	Other	Water
EPA	Other	GHG
EPA	Other	Incinerator Guidelines for States
EPA	Regulatory Action	Uranium and Thorium Mill Tailings
EPA	Reports	Annual Toxics Release Inventory
EPA	Guidance	Air
EPA	Other	NAAQS Review Deadline
EPA	Findings of Failure	Ozone Plan Findings of Failure: 15 States and DC

SUMMARY

- Final NPDES General Permit for Stormwater Discharges from Construction Activities (1/19/17). Replaces the prior general permit that prevents operators from needing individual permits.
- Proposed Reissuance of the NPDES General Permit for Facilities Related to Oil and Gas Extraction in the Territorial Seas of Texas (1/19/17). Replaces the prior general permit that prevents operators from needing to secure individual permits. Authorizes discharges from exploration, development, and production facilities located in and discharging into the territorial seas off Texas.
- Public Notification Requirements for Combined Sewer Overflows to the Great Lakes Basin (1/13/17). Rule would implement section 425 of the FY 2016 Appropriations Bill to establish public notice requirements.
- Drinking Water Infrastructure Needs Survey and Assessment – Sixth Report to Congress. OMB received this draft report from EPA on January 19, 2017, for comment and interagency review. The report compiles data collected during FY 2015 on the drinking water infrastructure needs for public water systems across the country and will be used to calculate the allocation formula for State Revolving Fund (SRF) grants beginning in FY 2018. RMO is currently reviewing the report.
- Safe Drinking Water Act Assessment of Lead in Drinking Water (1/19/17). EPA published a Federal Register Notice seeking nominations for an expert external peer review panel and public comment on a draft report entitled, “Proposed Modeling Approaches for a Health Based Benchmark for Lead in Drinking Water” and the draft charge questions for the expert peer review panel. Nominations must be received by February 21, 2017, and comments on the draft report and charge questions must be received by March 6, 2017.
- Mid-Term Review Decision of GHG Standards for Cars and Light Trucks. On January 12, 2017, the EPA determined to maintain the current GHG emissions standards for model year (MY) 2022-2025 vehicles.
- Proposed Incinerator Guidelines for States (1/10/17). This proposed rule sets emissions limits, progress milestones, and other elements that the state plans are to contain.
- Proposed Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings (1/19/17). EPA re-proposed standards applicable to byproduct materials produced by uranium in-situ recovery (ISR). The standards would be implemented by the U.S. Nuclear Regulatory Commission (NRC) and NRC Agreement States.
- Annual Toxics Release Inventory. This EPA Report shows releases of toxic chemicals into the air nation-wide.
- Federal GHG Accounting and Reporting Guidance. This CEQ led effort provides methods for calculating GHG emissions in accordance with E.O. 13693. This was finalized on January 17, but is not currently posted on the CEQ website.
- NAAQS Review Deadlines for NO2/SO2. On January 17, EPA reached a tentative settlement with a litigant (Sierra Club) that commits the agency to hard deadlines for reviewing the National Ambient Air Quality Standards (NAAQS) for NO2 and SO2.
- Ozone Plan Findings of Failure. On January 20, EPA signed "findings of failure" of 15 states and D.C. to submit state implementation plans for the 2008 ozone air quality standard, starting the clock on a two-year window under the Clean Air Act for those jurisdictions to submit approvable plans for become subject to a Federal Implementation Plan.

RECOMMENDED ACTION	OIRA COMMENT
Deliberative Process Privilege/Ex. 5	

EPA	Regulatory Action	Hazard Ranking System
EPA	Regulatory Action	Hazardous Waste Generator Improvements Rule
EPA	Regulatory Action	CERCLA
EPA	Regulatory Action	CERCLA
EPA	Regulatory Action	CAA
EPA	Guidance	Remediating Contaminated Sediment Sites Directive
EPA	Denial of Claims	Gold King Mine Claims
EPA	Policy Action	Pesticides
EPA	Regulatory Action	Trichloroethylene Ban

• Addition of a Subsurface Intrusion Component to the Hazard Ranking System Final Rulemaking (1/19/17). This rule allows Subsurface Intrusion to be included as a factor in scoring a contaminated site under the Hazard Ranking System for inclusion on the Superfund National Priorities List.

This rule finalizes revisions to the hazardous waste generator regulations under the Resource Conservation and Recovery Act (RCRA). EPA revised certain components of the hazardous waste generator regulatory program to clarify the regulation and provide regulatory flexibilities that will reduce regulatory burden.

• CERCLA 108(b) Financial Assurance Proposed Rulemaking for the Hardrock Mining Industry (1/11/17). This proposed rule establishes financial assurance requirements for the Hardrock Mining industry under CERCLA 108(b).

• CERCLA 108(b) Financial Assurance Notice for the Chemical, Petroleum, and Electric Power Industries (1/11/17). This notified the chemical manufacturing, petroleum and coal products manufacturing, and electric power generation industries about EPA's intent to issue proposed financial assurance rulemakings pursuant to a court ordered schedule over the next seven years.

• Risk Management Program Final Rule (1/13/17). This final rulemaking is on the Accidental Release Prevention Requirements of the Risk Management Program under the Clean Air Act.

• Remediating Contaminated Sediment Sites Directive. On January 9, 2017, Assistant Administrator Mathy Stanislaus issued a directive to the Regional Administrators following up on recommendations made by GAO on sediment site remediation. EPA plans on sending to Congress under a cover letter approved by OMB in the next few weeks.

• Gold King Mine Claims. On January 13, 2017, EPA denied a majority of claims filed under the Federal Tort Claims Act related to the August 5, 2015 Gold King Mine Release. EPA will continue to operate the water treatment facility at the site and water monitoring programs in areas previously impacted by the spill.

• Final policy for addressing acute risks to bees from pesticides (1/12/17). Prohibits applications of acutely toxic pesticides under certain conditions when bees are most likely to be present.

• Proposed rule to ban trichloroethylene (TCE) when used in vapor degreasing (1/11/17). The proposed rule affects consumer and occupational settings.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

EPA	Regulatory Action	Nanoscale Materials
EPA	Regulatory Action	Methylene chloride and NMP use
EPA	Regulatory Action	Toxic Release Inventory
EPA	Regulatory Action	Pesticides
EPA	Reports	Toxic Substances Control Act
EPA	Risk Assessment	Pesticides
EPA	Other	Endangered species
EPA	Other	Pesticides, Drinking Water
EPA	Enforcement Actions	CAA
EPA	Enforcement Actions	Proposed Consent Decree

• Final rule for Reporting and Record Keeping Requirements on Nanoscale Materials (1/11/17). Industry is required to participate in a one-time reporting requirement concerning chemicals made at the nanoscale.

• Proposed rule to limit methylene chloride and NMP when used as paint removers (1/12/17). The proposed rule affects consumer and occupational settings.

• Proposed rule to add natural gas processing facilities to list of industrial sectors covered by the Toxic Release Inventory (1/6/17).

• Certified Applicators of Restricted Use Pesticides Final Rule (1/4/17). Only certified applicators can spray restricted use pesticides. The final rule published on January 4, 2017 updates competency standards and raises the minimum age of certified applicators. Under the rule, states submit plans for EPA's approval that explain how state certification programs comply with the updated standards.

• Report to Congress concerning resource and capacity needs to conduct chemical risk evaluations under the amended Toxic Substances Control Act (TSCA). As required by the recently amended TSCA, EPA provided this report to Congress on January 19, 2017. EPA indicated that the additional requirements of the amended TSCA pose resource challenges, but that the agency is working to increase capacity to implement the requirements of the new law.

• Four neonicotinoid pesticide risk assessments made available for public comment (1/12/17). EPA found that most crop uses do not pose significant risks to bee colonies, but spraying for several crops may pose risks.

• Final biological evaluations of three chemicals' (chlorpyrifos, diazinon, and malathion) impacts on endangered species (1/18/17). Because these pesticides are used widely it was found that they 'may affect' or are 'likely to adversely affect' a variety of species across multiple taxa.

• Updated list of human health benchmarks for pesticides in drinking water (1/18/17). EPA posted an update of benchmark values for public drinking water systems to determine if the levels of pesticides present in water samples may pose a risk to human health.

• EPA Notification - Fiat Chrysler of Clean Air Act Violations for alleged violations of the Clean Air Act. Violations include installing and failing to disclose engine management software with 3.0 liter diesel engines sold in the United States.

• Volkswagen Settlement. On January 10th, EPA and Volkswagen released a negotiated draft settlement with U.S. authorities over the company's diesel emissions scandal. Criminal and Civil fines related to this settlement could total \$4.3 billion.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

EPA	Regulatory Action	Municipal Solid Waste
EPA	Regulatory Action	Emission Standards
EPA	Regulatory Action	Biomass Fuel Standards
EPA	Regulatory Action	Fine Particulate Matter Standards
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	Air Quality
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	Pollution Plans

Determination of Full Program Adequacy of Washington Municipal Solid Waste Landfill Permit Program: Delayed until 3/21/2017. FR Document Numbers 2016-26754 (2017-01822)

Formaldehyde Emission Standards for Composite Wood Products: Delayed until 3/21/2017. FR Document Numbers 2016-27987 (2017-01822)

Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018: Delayed until 3/21/2017. FR Document Numbers 2016-28879 (2017-01822)

Determination of Attainment of the 2012 Annual Fine Particulate Matter Standard: Pennsylvania; Delaware County Nonattainment Area: Delayed until 3/21/2017. FR Document Numbers 2016-29751 (2017-01822)

Air Plan Approval: Michigan; Part 9 Miscellaneous Rules: Delayed until 3/21/2017. FR Document Numbers 2016-30195 (2017-01822)

Determination of Attainment of the 2008 Ozone National Ambient Air Quality Standards: Mariposa County, California: Delayed until 3/21/2017. FR Document Numbers 2016-30477 (2017-01822)

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Louisiana; Redesignation of Baton Rouge 2008 8-Hour Ozone Nonattainment Area to Attainment: Delayed until 3/21/2017. FR Document Numbers 2016-30776 (2017-01822)

Air Plan Approval: Wisconsin; Infrastructure SIP Requirements for the 2012 PM2.5 NAAQS: Delayed until 3/21/2017. FR Document Numbers 2016-31017 (2017-01822)

Approval and Promulgation of Implementation Plans: New York Prevention of Significant Deterioration of Air Quality and Nonattainment New Source Review; Infrastructure State Implementation Plan Requirements: Delayed until 3/21/2017. FR Document Numbers 2016-31018 (2017-01822)

Air Plan Approval: KY; RACM Determination for the KY Portion of the Louisville Area 1997 Annual PM2.5: Delayed until 3/21/2017. FR Document Numbers 2016-31023 (2017-01822)

National Oil and Hazardous Substances Pollution Contingency Plan: National Priorities List: Partial Deletion of the North Penn Area 6 Superfund Site: Delayed until 3/21/2017. FR Document Numbers 2016-31032 (2017-01822)

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	Underground Injection Control
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	Emission Standards
EPA	Regulatory Action	CAA Risk Management
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	Civil Penalties
EPA	Regulatory Action	State Implementation Plans

Approval of California Air Plan Revisions, Great Basin Unified Air Pollution Control District: Delayed until 3/21/2017. FR Document Numbers 2016-31225 (2017-01822)

Approval of California Air Plan Revisions, South Coast Air Quality Management District: Delayed until 3/21/2017. FR Document Numbers 2016-31226 (2017-01822)

Air Plan Approval: Illinois; Volatile Organic Compounds Definition: Delayed until 3/21/2017. FR Document Numbers 2016-31227 (2017-01822)

State of Kentucky Underground Injection Control (UIC) Class II Program: Primacy Approval: Delayed until 3/21/2017. FR Document Numbers 2016-31268 (2017-01822)

Approval and Promulgation of Implementation Plans: Louisiana; State Boards: Delayed until 3/21/2017. FR Document Numbers 2016-31332 (2017-01822)

Revisions to National Emission Standards for Radon Emissions from Operating Mill Tailings: Delayed until 3/21/2017. FR Document Numbers 2016-31425 (2017-01822)

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act: Delayed until 3/21/2017. FR Document Numbers 2016-31426 (2017-01822)

Approval and Promulgation of Implementation Plans: Rhode Island; Clean Air Act Infrastructure State and Federal Implementation Plans: Delayed until 3/21/2017. FR Document Numbers 2016-31444 (2017-01822)

Approval of Arizona Air Plan Revisions: Ajo and Morenci, Arizona; Second 10-Year Sulfur Dioxide Maintenance Plans and Technical Correction: Delayed until 3/21/2017. FR Document Numbers 2016-31637 (2017-01822)

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits: Procedures for Decisionmaking: Delayed until 3/21/2017. FR Document Numbers 2016-31638 (2017-01822)

Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho PM2.5 Nonattainment Area: Delayed until 3/21/2017. FR Document Numbers 2016-31643 (2017-01822)

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

EPA	Regulatory Action	Air Quality
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	State Implementation Plans
EPA	Regulatory Action	Particulate Matter Sources

Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter: Delayed until 3/21/2017. FR Document Numbers 2016-31747 (2017-01822)

Air Plan Approval: Georgia: Procedures for Testing and Monitoring Sources of Air Pollutants: Delayed until 3/21/2017. FR Document Numbers 2016-31753 (2017-01822)

Approval and Promulgation of Implementation Plans: Texas; Control of Air Pollution from Visible Emissions and Particulate Matter: Delayed until 3/21/2017. FR Document Numbers 2017-00087 (2017-01822)

Approval and Promulgation of Implementation Plans: Alabama; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard: Delayed until 3/21/2017. FR Document Numbers 2017-00159 (2017-01822)

Air Plan Approval: TN Infrastructure Requirements for the 2010 NO2 NAAQS: Delayed until 3/21/2017. FR Document Numbers 2017-00161 (2017-01822)

Revisions to Procedure 2-Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources: Published 11/21/2016 and scheduled to become effective on 2/21/2017. FR Document Number 2016-27849

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]
From: Benton, Donald
Sent: Thur 3/2/2017 6:53:36 PM
Subject: FW: Petition to EPA for Reconsideration of the HHWQS Rule for Maine/Idaho Letter on HHWQS
[removed.txt](#)
[Letter to Admin Scott Pruitt - Idaho's WQS HHC 2017-0228.pdf](#)
[20170227090758285.pdf](#)

FYI- petition on HH Water Quality Standards to:

- a) Approve WA Dept of Ecology rule
- b) Withdraw EPA rule

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Schwartz, Jerry [mailto:Jerry_Schwartz@afandpa.org]
Sent: Thursday, March 2, 2017 1:43 PM
To: Benton, Donald <benton.donald@epa.gov>
Subject: Petition to EPA for Reconsideration of the HHWQS Rule for Maine/Idaho Letter on HHWQS

Dear Mr. Benton,

As Chris McCabe indicated to you, Maine and Idaho are facing similar issues to those that underlie the petition for reconsideration in Washington State.

Specifically, in Maine, EPA disapproved previous Human Health Water Quality Standards (HHWQS) and issued a final federal rule applicable to certain waters in the state. In response, Maine sued the agency, and that case is ongoing. Attached is a petition for reconsideration and withdrawal that Governor LePage sent to Administrator Pruitt on February 27th.

In Idaho, EPA also disapproved existing HHWQS. In response, Idaho Department of Environmental Quality (DEQ) revised the HHWQS and sent them to EPA for approval. Attached is a letter from the Director of DEQ to Administrator Pruitt requesting that EPA approve the revised HHWQS.

EPA's actions in all three states are based on the same legal theories and policies.

Please feel free to contact me if you have any questions or need additional information.

Jerry Schwartz

Senior Director

Energy and Environmental Policy

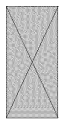
Jerry_Schwartz@afandpa.org

Personal Phone/Ex. 6

AMERICAN FOREST & PAPER ASSOCIATION

1101 K Street, N.W., Suite 700

Washington, D.C. 20005





Paul R. LePage
GOVERNOR

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

February 27, 2017

Via overnight Fed Ex and email

Mr. Scott Pruitt, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue
Mail Code: 1101A
Washington D.C. 20460
Pruitt.scott@Epa.gov

Re: *Petition for EPA's partial withdrawal of EPA letter actions and repeal of EPA's final rule on Maine's water quality standards*

Dear Mr. Pruitt:

Attached is a Petition for the reconsideration and withdrawal, with one important exception, of three EPA letter actions on Maine's water quality standards, and the repeal or withdrawal of EPA's final rule entitled Promulgation of Certain Federal Water Quality Standards Applicable to Maine, 81 Fed. Reg. 92466 (Dec. 19, 2016). Also attached in support of this Petition are comments by the Maine Attorney General and the Maine Department of Environmental Protection on the proposed version of EPA's final Maine rule, as well as a copy of Maine's Second Amended Complaint filed in *Maine v. McCarthy, et al.*, currently pending in the United States District Court for the District of Maine, No. 1:14-cv-00264-JDL. I hope that you give this Petition the serious consideration it deserves.

Sincerely,

Paul R. LePage
Governor, State of Maine



PRINTED ON RECYCLED PAPER

PETITION TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Petition for EPA's reconsideration and withdrawal of all portions of EPA's letter actions dated February 2, 2015, March 16, 2015, and June 5, 2015, with the exception of EPA's recognition of Maine's statewide environmental regulatory jurisdiction and authority, and repeal or withdrawal of EPA's final rule entitled Promulgation of Certain Federal Water Quality Standards Applicable to Maine, 81 Fed. Reg. 92466 (Dec. 19, 2016)

Submitted February 27, 2017, to the Administrator, U.S. Environmental Protection Agency

The State of Maine, through Governor Paul R. LePage, submits this petition to the Administrator of the U.S. Environmental Protection Agency ("EPA") pursuant to 5 U.S.C. § 553(e) for the following actions: 1) reconsideration and withdrawal of all aspects of EPA's letter actions and supporting rationale regarding Maine's water quality standards dated February 2, 2015, March 16, 2015, and June 5, 2015, with the exception of EPA's recognition of Maine's statewide environmental regulatory jurisdiction and authority, including in Indian waters and lands; and 2) repeal or withdrawal of EPA's final rule entitled Promulgation of Certain Federal Water Quality Standards Applicable to Maine, 81 Fed. Reg. 92466 (Dec. 19, 2016) ("Maine Rule").

In support of this request, and in addition to the following Supporting Statement, attached are copies of comments previously submitted to EPA by the Maine Attorney General and the Maine Department of Environmental Protection on the proposed version of EPA's Maine Rule, as well as a copy of Maine's Second Amended Complaint filed in *Maine v. McCarthy, et al.*, which is currently pending in the United States District Court for the District of Maine, No. 1:14-cv-00264-JDL. These attached materials more fully outline the nationally unique tribal-state relationship that exists between the State of Maine and the four federally-recognized Maine Indian tribes as a result of Maine's state and federal Indian settlement acts, including the state Maine Implementing Act, 30 M.R.S. §§ 6201 *et seq.* ("MIA") and the federal Maine Indian Claims Settlement Act, 25 U.S.C. §§ 1721 *et seq.* ("MICSA")¹ (collectively the "1980 Acts"). The materials also more fully outline the history in recent years of EPA's failure to recognize Maine's role as a state under the Clean Water Act ("CWA") and under the unique jurisdictional principles contained in the 1980 Acts.

Because this matter is also the subject of currently pending litigation, the following Supporting Statement describing the rationale for Maine's request to EPA is relatively brief. For a more in-depth discussion of background, Maine's positions, and the intricacies of Maine's

¹ MICSA was formerly codified at 25 U.S.C. §§ 1721-1735. MICSA and other settlement acts remain in effect but were removed from the United States Code as of 25 U.S.C. Supp. IV (September 2016) in an effort by codifiers to improve the code's organization.

unique tribal-state jurisdictional arrangement under the 1980 Acts, Maine invites EPA to follow up this Petition with a meeting with the members of the Office of the Maine Attorney General representing Maine in the pending litigation with EPA.

MAINE'S SUPPORTING STATEMENT

Under Maine's nationally-unique 1980 Acts, Maine has statewide environmental regulatory jurisdiction and authority, including in all Indian waters and lands, which was confirmed by the First Circuit Court of Appeal in the context of water regulation in *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007).

Under the CWA, states like Maine must establish water quality standards ("WQS") for all surface waters, including designating the uses of all such waters and establishing water quality criteria designed to protect the state's designated uses. In 1986, Maine adopted a new and comprehensive water classification program, now codified at 38 M.R.S. §§ 464-470, which contained all of Maine's designated uses and other WQS for its waters, and which EPA fully approved by 1990 without ever suggesting that Maine's WQS in that program did not apply or were not fully in effect in Indian waters for CWA purposes. By law, under both the CWA and EPA's regulations, those approved Maine WQS became the WQS in effect for CWA purposes for all applicable Maine waters at that time, including Maine's Indian waters. Indeed, for decades prior to 2005, EPA consistently applied Maine's WQS in Indian waters for CWA purposes, which also created significant reliance interests on the part of the regulated community.

In late 2004, however, Maine sought review in the First Circuit Court of Appeals of an EPA decision that Maine had no jurisdiction to regulate certain discharges of pollutants from two tribal wastewater treatment facilities. In *Maine v. Johnson*, the First Circuit concluded that EPA was wrong and that Maine did have such jurisdiction. Under the 1980 Acts, Maine's environmental laws on water quality, including its WQS, apply in Indian waters to the same extent as in other waters, and EPA cannot require that tribal members be treated differently than the rest of Maine's citizens for any environmental regulatory or water quality purposes. Congress reaffirmed this core principle of the 1980 Acts in 1987 when it first added tribal provisions to the CWA, but expressly stated that the new CWA tribal provisions would not apply in Maine for regulatory purposes because of the 1980 Acts.

Also in 2004, and as Maine pursued its appeal in the *Maine v. Johnson* matter, EPA began limiting its approvals of Maine's WQS revisions to non-Indian waters only while taking no action for an unspecified set of Indian waters. EPA later suggested that Maine's already-EPA-approved WQS that had been governing Maine's Indian waters for decades had never actually been in effect for any CWA purposes. The implication of this EPA reversal in position was that, under EPA's new thinking, a total water regulatory void existed in all of Maine's Indian waters, which was in violation of Congressional directives in the CWA and EPA's own regulations, guidance, and past application of Maine's WQS in Maine's Indian waters. EPA's change in position also disrupted decades of settled expectations regarding the Maine regulatory structure in those areas.

Faced with this new unsettling EPA approach, Maine originally filed its federal legal action in the District of Maine in 2014 to get EPA to honor Maine's statewide regulatory jurisdiction and to approve all of Maine's outstanding WQS for Indian waters. Maine expected this to happen, especially given that even EPA now agrees that Maine has statewide regulatory jurisdiction and authority over all its waters, including Indian waters. In response to Maine's action, however, EPA did something unexpected when it issued its February 2, 2015 letter, which generally does two things. First, EPA belatedly but correctly acknowledged Maine's statewide environmental regulatory jurisdiction and authority to set WQS for all Maine waters, including Indian waters, which EPA was effectively required to do under the 1980 Acts and *Maine v. Johnson*. Maine is not asking for EPA to reconsider or withdraw this portion of EPA's February 2, 2015 letter.

But then, in a surprising end-run of *Maine v. Johnson*, the plain language of the 1980 Acts, and CWA procedural requirements, EPA's February 2, 2015 letter also disapproved various Maine WQS (Maine's human health water quality criteria) for unspecified Indian waters based on a complex and convoluted new rationale that Maine is challenging in the District of Maine litigation, and that Maine is now asking EPA to fully reconsider and withdraw here.² In this portion of EPA's February 2, 2015 letter, EPA claims for the first time that in exercising its jurisdiction, Maine must ensure through new and heightened tribal-specific WQS that fish in Indian waters are of sufficient quality for tribal members to subsist on at consumption levels derived from historical reconstructed estimates taken from ethnographic accounts from the 16th through 19th centuries. EPA also now claims that its decades-long prior acceptance and consistent application of Maine's WQS throughout Indian waters were all mistakes.

EPA arrived at this remarkable change in position by newly and incorrectly interpreting (in 2015) the 1980 Acts as implicitly creating a new designated use of tribal sustenance fishing for Maine's Indian waters, even though Maine's water program contains no such use. The Maine Legislature, which has sole authority to make changes to Maine's water classifications and designated uses of its waters, 38 M.R.S. §§ 464(2)(D), 464(2-A)(E), never created such a sustenance fishing use, but actually considered and rejected a controversial 2002 proposal to create a similar "subsistence" designated use for limited portions of the Penobscot River only. The new sustenance fishing designated use is entirely a creation of EPA based on its new and incorrect 2015 interpretation of Maine law.

EPA's 2015 creation of a new designated use of tribal sustenance fishing for Maine is also based on a convoluted new interpretation of the 1980 Acts and other Maine Indian

² Maine is also asking EPA to reconsider and withdraw two additional subsequent letters regarding Maine's WQS dated March 16, 2015, and June 5, 2015, which EPA issued as a result of Maine's original federal action. The March 2015 letter contains some EPA tribal WQS disapprovals, as well as some non-tribal components, while the June 2015 letter contains EPA actions primarily involving non-tribal WQS. Maine asks that all three letters be reconsidered and withdrawn, in addition to the repeal of EPA's resulting Maine Rule, so that the unlawful tribal components of EPA's various actions can be undone, and so that Maine can consult with EPA to find reasonable, mutually agreeable approaches to the remaining non-tribal WQS issues outside of the adversarial context of ongoing federal court litigation to protect Maine's jurisdiction under the 1980 Acts.

settlement acts that turns those acts and the intent of Congress on their head by establishing different WQS requirements for Maine's Indian tribes than for other Maine citizens – the very thing that the 1980 Acts were designed to avoid. EPA's new interpretation is also contrary to Congress' subsequent statement that the CWA's tribal provisions do not apply in Maine for regulatory purposes because of the 1980 Acts. Moreover, by creating a new designated use of sustenance fishing for Maine, EPA has usurped Maine's role as a state under the CWA, which reserves the function of designating the uses of state waters to the states. EPA also did all of this without following CWA procedural requirements regarding the creation of new WQS such as a new designated use.

EPA began quietly pursuing this new revised approach to Maine's WQS around 2004 in order to further separate tribal environmental goals pursuant to EPA national tribal policies that were developed after 1980 and that do not apply in Maine under the 1980 Acts. Since EPA's change in position around 2004, EPA has increasingly been working on important Maine water quality issues with Maine's Indian tribes, who have no environmentally regulatory authority in Maine under either the CWA or the 1980 Acts, while excluding the State of Maine, which has full statewide environmental regulatory authority over all waters. This has unfortunately created discord and tension in Maine and has strained relationships with EPA and the Maine tribes.

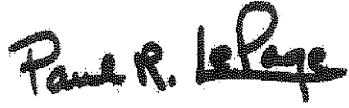
EPA's new approach to WQS in Maine is also similar to EPA actions in other states such as Washington and Idaho. The common features of EPA's recent actions in Maine and other states include new EPA requirements when states develop WQS that intrude on state policy decisions and generally eliminate state discretion, such as forcing states to use higher cancer risk levels and aspirational unsuppressed fish consumption rates for tribes. In Washington, as in Maine, EPA has created new tribal-specific federal designated uses through new EPA interpretations of existing state WQS laws, and has reformulated the states' chosen "target" populations of such designated uses based on the new EPA interpretations. The CWA requires that any federal WQS be created through rulemaking – not through new EPA interpretations of state law, which sidesteps CWA legal requirements. All of these EPA intrusions into traditional state matters are contrary to the CWA's principles of cooperative federalism and EPA's existing guidance, and represent an increasingly federalized regulatory approach to state waters.

Reconsideration and withdrawal of EPA's three letters at issue here and EPA's final Maine Rule (with the exception of EPA's long overdue acknowledgement of Maine's statewide environmental regulatory jurisdiction and authority) will honor clear Congressional and Maine legislative intent regarding Maine's unique tribal-state relationship, restore Maine's state role over the planning and management of its waters, and hopefully represent a positive first step start towards improved working relationships with EPA and the Maine Indian tribes.

CONCLUSION

For the reasons described above, as well as in Maine's Second Amended Complaint and various comments submitted on EPA's Maine Rule, Maine respectfully requests that EPA 1) reconsider and withdraw all aspects of EPA's letter actions dated February 2, 2015, March 16, 2015, and June 5, 2015, with the exception of EPA's recognition of Maine's statewide environmental regulatory jurisdiction and authority, including in Indian waters and lands; and 2) repeal or withdraw EPA's final Maine Rule.

Dated this 27 day of February, 2017.

A handwritten signature in black ink that reads "Paul R. Lepage". The signature is written in a cursive style with a large, stylized "P" and "L".

Paul R. Lepage
Governor, State of Maine

2011

**COMMENTS OF MAINE ATTORNEY GENERAL JANET MILLS
IN RESPONSE TO EPA'S PROPOSAL OF CERTAIN FEDERAL
WATER QUALITY STANDARDS APPLICABLE TO MAINE**

June 14, 2016

Maine Attorney General Janet T. Mills ("Maine AG") hereby submits the following comments in response to the Proposal of Certain Federal Water Quality Standards ("WQS") Applicable to Maine ("Proposed Maine Rule") by the United States Environmental Protection Agency ("EPA") under the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.* ("CWA"). 81 Fed. Reg. 23239 (April 20, 2016). The underlying basis for much of the Proposed Maine Rule (*see id.* at 23241-47) is set forth in EPA Region 1's letter action dated February 2, 2015, and its accompanying 51-page rationale (collectively the "February 2, 2015 Action"), which Maine is presently challenging in a separate federal court action pending in the United States District Court for the District of Maine, Civil Action No. 14-cv-264-JDL ("Pending Action").

1. All of Maine's arguments in its Pending Action also apply to the Proposed Maine Rule.

All portions of EPA's Proposed Maine Rule that were prompted by, taken in response to, or are otherwise based on EPA's February 2, 2015 Action (including Sections II-IV(A)-(B) of the Proposed Maine Rule) are unlawful based on Maine's arguments raised in its Pending Action, which apply with equal force to EPA's Proposed Maine Rule. Maine's Second Amended Complaint filed in the Pending Action is attached as Exhibit ("Ex.") 1, and is incorporated herein by reference.¹ The Maine AG comments more specifically as follows:

¹ Maine requests that EPA consider as part of these proceedings and include in EPA's administrative record all exhibits to Maine's Ex. 1 (Second Amended Complaint). Because EPA already has these exhibits as a result of the Pending Action, they are not being resubmitted here absent an express EPA request.

2. Maine's Indian Settlement Acts did not "expressly confirm" or establish any "aboriginal" right to tribal sustenance fishing, let alone any kind of right to any heightened quality of water and/or fish based on membership in a Maine tribe.

EPA's Proposed Maine Rule, like its February 2, 2015 Action, wrongfully asserts that an underlying purpose of Maine's various Indian settlement acts was to expand the land base for all of Maine's tribes in order to preserve their cultural sustenance practices (including sustenance fishing), and that this alleged underlying purpose in turn requires EPA, in its reviewing role with respect to Maine's WQS submissions under the CWA, to ensure a heightened quality of water and/or fish in order to protect Maine's tribes. 81 Fed. Reg. at 23241-42. Nothing in the CWA contemplates or authorizes this EPA approach. Likewise, the history and plain language of Maine's Indian settlement acts do not support EPA's interpretation of the alleged underlying (and unwritten) purpose of those acts, but instead prohibit EPA's position, which would impermissibly give Maine's tribes an enhanced status and greater rights with respect to water quality than the rest of Maine's population.

With respect to the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs (collectively the "Northern Tribes"), EPA's interpretation of the underlying purpose of the Maine Indian settlement acts is flatly contradicted by express provisions of the Maine Implementing Act, 30 M.R.S. §§ 6201 *et seq.* ("MIA"), as confirmed and ratified by the federal Maine Indian Claims Settlement Act, 25 U.S.C. §§ 1721 *et seq.* ("MICSA") (collectively the "1980 Acts"). Under the plain language of these 1980 Acts, the Northern Tribes are, without exception, fully subject to Maine's jurisdiction to the same extent as any other person or "lands and natural resources," a phrase which expressly includes water and water rights, and fishing rights. 30 M.R.S. §§ 6203(3), 6204; 25 U.S.C. §§ 1722(d), 1725(a); (Ex. 1, Second Amended Complaint, ¶¶ 47-48). Thus, under the 1980 Acts, the Northern Tribes are subject to the same

environmental regulatory treatment as the rest of Maine's citizens, including with respect to water quality and fishing, and that aspect of the settlement is unaffected by EPA's novel new interpretation of the underlying purpose of the 1980 Acts.

The Penobscot Indian Nation ("PIN") and the Passamaquoddy Tribe (collectively the "Southern Tribes") are also subject to the same environmental regulatory treatment as the rest of Maine's citizens, including with respect to water quality and fishing, but with a limited caveat — namely, that members of these Southern Tribes may, within their respective reservations only, generally take fish free from otherwise applicable State fish and game rules regulating the method, manner, bag and size limits and season for taking fish, provided that the fish is taken for the Southern Tribal member's individual sustenance rather than for a commercial or some other purpose. 30 M.R.S. § 6207(4); (Ex. 1, Second Amended Complaint, ¶¶ 41-46). This limited right of members of the Southern Tribes to take fish arises from a hunting and fishing provision in MIA, rather than from any of the express jurisdictional provisions of the 1980 Acts, which memorialized a negotiated settlement that resolved disputed claims and expressly transferred and extinguished all aboriginal tribal rights. *See* 30 M.R.S. § 6204; 25 U.S.C. §§ 1721(a)(2), 1721(b)(2)-(4), 1723, 1725(a)-(b)(1).² Thus, with respect to the Southern Tribes, EPA's Proposed Maine Rule wrongfully asserts that MIA, 30 M.R.S. § 6207(4), "expressly confirmed an aboriginal right" to tribal sustenance fishing in the Southern Tribes' reservations. 81 Fed. Reg. at 23241. That limited right in MIA is not an aboriginal right, as all aboriginal rights were transferred and extinguished; it is a statutory entitlement as a result of the settlement underlying

² Maine's position on the transfer and extinguishment of all aboriginal tribal rights is more fully set forth in briefs filed in the federal Maine District Court action over PIN's alleged ownership of portions of the Penobscot River, which position and briefs are incorporated herein by reference. (*See* Maine's motion for summary judgment in *PIN v. Mills*, No. 12-cv-254-GZS, attached as Ex. 2 (at pp. 33-38), and Maine's reply in support of that motion, attached as Ex. 3 (at pp. 20-25)).

the 1980 Acts. It also has nothing to do with Maine's underlying environmental regulatory jurisdiction over the quality of all State waters, which is expressly addressed by different jurisdictional portions of the 1980 Acts that contain no exceptions to Maine's statewide environmental regulatory jurisdiction. See 30 M.R.S. §§ 6204, 6206; 25 U.S.C. §§ 1721(b)(2)-(4), 1725(a)-(b)(1). Thus, like the Northern Tribes, the Southern Tribes are subject to the same environmental regulatory treatment as the rest of Maine's citizens, including with respect to water quality, and that aspect of the settlement is also unaffected by any new EPA interpretation of any alleged underlying purpose of the 1980 Acts.

Under MICSA's Sections 1725(a)-(b)(1) and MIA's Section 6204, all Maine tribes are subject to Maine's environmental regulatory jurisdiction with respect to the quality of Maine's waters. Under MIA's Section 6206, the Southern Tribes are treated like municipalities and are exempt from Maine's jurisdiction with respect to "internal tribal matters," which the First Circuit Court of Appeals has interpreted narrowly so that it "does not displace general Maine law on most substantive subjects, including environmental regulation." *Maine v. Johnson*, 498 F.3d 37, 46 (1st Cir. 2007); see also *id.* at 45 (if the internal affairs exemption negated Maine's ability to environmentally regulate within tribal waters, it would be "hard to see what would be left of the compromise restoration of Maine's jurisdiction" set forth in the 1980 Acts). MIA's Section 6207(4) and its limited right to take fish free from fish and game restrictions are not mentioned in either MIA's Sections 6204 or 6206, because that limited right to "take" fish is not a general exception with respect to Maine's environmental regulatory jurisdiction – it is confined entirely to the type of fish and game rules and regulations outlined in Section 6207 such as "the method, manner, bag and size limits and season for fishing." See 30 M.R.S. § 6207(3).

Moreover, no part of MIA Sections 6204, 6206, or 6207 suggests in any way that there is any implicit or bootstrapped tribal right to a heightened quality of water or fish for any reason, let alone as a result of Section 6207(4). This is because the intent and plain terms of the 1980 Acts require equal environmental regulatory treatment with respect to all Maine waters for all Maine citizens, including members of all of Maine's Indian tribes. (Ex. 1, Second Amended Complaint, ¶¶ 16-50, 62-67). EPA wrongly cites to 30 M.R.S. § 6207 (81 Fed. Reg. at 23241) as an alleged reflection of Maine's intent to create a CWA designated use of "sustenance fishing," which would violate other express provisions and the core principles of the 1980 Acts.

3. Maine has never adopted any CWA designated use of "sustenance fishing" for any waters, and Maine's existing designated use of "fishing" for all surface waters, which protects Maine's general population only, has been in effect statewide since EPA's approval of Maine's Water Classification Program in the 1980s.

EPA unlawfully bases its Proposed Maine Rule on two new EPA interpretations of longstanding Maine law as establishing a new designated use of tribal "sustenance fishing" for all Maine Indian waters in order for all Maine's tribes "to preserve their culture and lifeways." 81 Fed. Reg. at 23241-42. These new EPA interpretations, first made and announced in EPA's February 2, 2015 Action (and now echoed in the Proposed Maine Rule), and which EPA wrongfully claims flow from the 1980 Acts, are unlawful.

Since at least 1986, Maine's Water Classification Program, now codified at 38 M.R.S. §§ 464-470, has included State-adopted and EPA-approved designated uses of "fishing" and "recreation in or on the water," which reflect the fishable/swimmable goals that are generally required by the CWA. (Ex. 1, Second Amended Complaint, ¶¶ 68-77). Decades ago, EPA fully approved all aspects of Maine's water program, including Maine's designated uses of "fishing" for all Maine surface waters – without any exception for any tribal waters. (See Ex. 1, Second Amended Complaint, ¶¶ 68-73).

EPA was also fully aware of the effect of the terms of the 1980 Acts prior to approving Maine's Water Classification Program in the 1980s. For instance, EPA issued an informal Maine status report (provided to Maine in March 1982) acknowledging Maine's statewide environmental regulatory jurisdiction over all of its waters, including Maine's Indian waters. (See Ex. 4, which is incorporated herein by reference, at p. 4, rejecting tribal rights with respect to areas under the Clean Air Act analogous to CWA designated uses, and noting that State law on environmental protection will apply in Indian territory). After EPA approved Maine's Water Classification Program (including Maine's designated use of "fishing" for all surface waters), EPA again stated its view that Maine has statewide environmental regulatory jurisdiction in a July 1993 EPA legal memorandum, which expressly limited Maine tribal rights under the CWA's new 1987 tribal provisions (Section 518) to receipt of CWA Section 106 funding grants – specifically because of the unique provisions of the 1980 Acts Maine giving statewide environmental regulatory jurisdiction over core environmental matters such as air and water quality. (See Ex. 5, which is incorporated herein by reference).

Until EPA's February 2, 2015 Action, EPA had never taken the position that Maine's longstanding designated use of "fishing" also encompassed an unwritten second designated use of "sustenance fishing" for the protection of anyone, let alone Maine's Indian tribes, in all (undefined) Indian waters. Likewise, until EPA's February 2, 2015 Action, EPA had never taken the position that any portion of MIA (including 30 M.R.S. § 6207(4)) was intended as or constituted a designated use of "sustenance fishing" for the reservation waters of the Southern Tribes (or any other waters). These recent EPA positions (*see* 81 Fed. Reg. at 23241-42) are contrary to the 1980 Acts, the CWA, EPA's guidance, and EPA's historical practice with respect to Maine's WQS.

As EPA knows, for CWA purposes there has never been any State-adopted designated use of “sustenance fishing” for any Maine waters. (See Ex. 1, Second Amended Complaint, ¶¶ 68-77). As EPA also knows, Maine expressly considered but rejected a controversial 2002 State proposal to the Maine Legislature that would have created for the first time a designated use of “subsistence” fishing, which was analogous to EPA’s newly created designated use of “sustenance fishing,” but for only a limited portion of the Penobscot River as opposed to all of Maine’s Indian waters. (See Ex. 6, which is incorporated herein by reference). Maine is aware of no other Maine effort to adopt any designated use of “sustenance” or “subsistence” fishing for any Maine waters. Moreover, as mentioned above, EPA already fully approved all aspects of Maine’s Water Classification Program, including Maine’s designated uses of “fishing” for all surface waters of the State, without any exception for any Maine Indian waters. Under EPA’s rules, 40 C.F.R. §§ 131.21(c)-(e), these WQS, which purport to apply to all Maine waters and which were adopted by Maine and submitted to EPA for review and approval prior to May 30, 2000, have been and *are* the WQS in effect for CWA purposes for all Maine surface waters, including all of Maine’s Indian waters.³

EPA’s new interpretations of Maine’s existing designated use of “fishing” and MIA’s Section 6207(4) as incorporating a new designated use of tribal “sustenance fishing” for Maine Indian waters represent federal actions taken entirely by EPA and do not reflect any State-adopted designated use. By these new interpretations of existing Maine law, EPA has attempted to federalize Maine’s WQS and create a new federal designated use in violation of both the

³ As of these comments, and as discussed below, EPA has never determined that Maine’s existing designated uses of “fishing” for all surface waters do not meet the requirements of the CWA, which means that EPA has never lawfully promulgated any more stringent designated uses. As a consequence, Maine’s designated use of “fishing” is and has been the applicable fishing use since EPA’s approval of Maine’s program in the 1980s. 40 C.F.R. §§ 131.21(c)-(e).

CWA and the 1980 Acts. In the course of creating its new federal designated use of tribal “sustenance fishing,” EPA also did not adhere to any of the CWA process required for new WQS, such as seeking public comment and/or holding public hearings on the new designated use. *See, e.g.* 40 C.F.R. §§ 131.21(c)-(e) (state WQS adopted and submitted to EPA prior to May 30, 2000 *are* the applicable WQS for CWA purposes until replaced by more stringent federal WQS), 131.22(c) (when promulgating WQS, EPA Administrator is subject to same process requirements as states); 40 C.F.R. §§ 131.10(e) (requiring states to provide notice and opportunity for hearing “[p]rior to adding or removing any use”) (removed and reserved eff. October 20, 2015, 80 Fed. Reg. 51020, 51021-22).

4. **EPA also lacks authority under the CWA to create any new kind of fishing designated use because there has never been any EPA determination that Maine’s existing designated use of “fishing” for all surface waters does not meet CWA requirements.**

The February 2, 2015 Action and EPA’s new interpretations of Maine law creating a new designated use of “sustenance fishing,” were by the EPA Region 1 Regional Administrator, who has no authority under the CWA to replace Maine’s existing statewide designated use of “fishing” with a new designated use of “sustenance fishing” for any Maine Indian waters. This was something that only the EPA Administrator could have done – if she had first made a formal determination that Maine’s prior adoption of a designated use of “fishing” violated the requirements of the CWA for such waters.⁴ To date, no such formal determination has ever been

⁴ If the EPA Administrator (rather than any Regional Administrator) determines that existing State WQS do not meet CWA requirements, or that a revised or new WQS is necessary to meet CWA requirements, then the EPA Administrator may, upon determining such a WQS is necessary, prepare and publish proposed regulations setting forth the revised or new WQS. 33 U.S.C. § 1313(c)(4)(B); 40 C.F.R. § 131.22(a)-(b); *Puget Soundkeeper Alliance v. EPA*, 2014 WL 4674393, *5 (W.D. Wash., 2014).

made by anyone at EPA, let alone the EPA Administrator.⁵ This is presumably because it is something that EPA could not do under the CWA, as Maine's designated use of "fishing" for all surface waters, which is designed to protect Maine's general population rather than a more focused population, meets all CWA requirements and is in full keeping with EPA regulations and guidance. In any event, and as discussed above, such a determination would also violate the 1980 Acts and their prohibition against any special or heightened environmental regulatory treatment based solely on membership in a Maine tribe. 25 U.S.C. §§ 1725(h), 1735(b).

The February 2, 2015 Action and the Proposed Maine Rule try to get around this deficiency (the lack of any EPA determination that Maine's existing statewide designated use of "fishing" violated CWA requirements) by claiming that no WQS (including designate uses) had ever been approved for Maine's Indian waters, so (in EPA's view) no such determination was ever necessary and EPA was free to simply make up its own new designated use of tribal "sustenance fishing." This revisionist approach defies historical reality, as EPA not only already fully approved all aspects of Maine's Water Classification Program for all Maine waters in the 1980s, but then also consistently enforced Maine's WQS in Indian waters in a variety of ways — as was required under the CWA. (*See* Ex. 1, Second Amended Complaint, ¶¶ 93-103). EPA's position also violates the CWA's requirement that States promulgate WQS for all interstate waters, and EPA's own rules and guidance. 33 U.S.C. §§ 1313(c)(1), (2); 40 C.F.R. § 131.3(i),

⁵ The necessity determination made by the EPA Administrator in the Proposed Maine Rule involves the sufficiency of Maine's human health criteria ("HHC") for undefined Indian waters only, and presumes the existence of EPA's newly-created designated use of tribal "sustenance fishing." 81 Fed. Reg. at 23242-43 ("for the waters in Maine where there is a sustenance fishing designated use and Maine's existing HHC are in effect, EPA hereby determines... that new or revised WQS for the protection of human health are necessary to meet the requirements of the CWA for such waters."). There has never been any EPA determination that Maine's existing "fishing" designated use does not meet CWA requirements for any waters, or that a new designated use of tribal "sustenance fishing" is required to meet CWA requirements for Indian (or any other) waters.

131.4; *PUD No. 1 of Jefferson Co. v. Washington Dep't of Ecology*, 511 U.S. 700, 704 (1994); 40 C.F.R. §§ 131.21(c)-(e).⁶ It is also an absurd position, as it would result in a decades-long regulatory void based on a lack of any WQS and resulting CWA protections for all of Maine's Indian waters, which would violate the CWA and the 1980 Acts. But this is exactly what EPA claims here – that there have never been any WQS (including designated uses) for any Maine Indian waters, and that all EPA permits, enforcement measures, and other actions taken to date with respect to water quality in Maine's Indian waters were mistakes and of no effect.

5. Maine has never chosen to protect Maine tribal members only as the “general target population” of any “fishing” or other designated use for any Maine waters.

As noted above, EPA purports to have already created (as a result of its new interpretations in its February 2, 2015 Action) a new designated use of tribal “sustenance fishing” for Maine (81 Fed. Reg. at 23242-43), which EPA designed to protect a tribal-only “general target population” that Maine itself never chose to provide with heightened protections. *Id.* at 23245 (“EPA’s analysis of the settlement acts also led EPA to consider the tribes to be the general target population in their waters.”); (*see also* Ex. 1, Second Amended Complaint, ¶ 86).

EPA’s decision to focus on protecting Maine’s tribes as the intended “general target population” is a new EPA approach that unlawfully usurps Maine’s primary role over its water under the CWA, as states have the primary authority and responsibility to establish WQS, including designated uses for all interstate waters. In its EPA-approved Water Classification

⁶ As EPA acknowledged in July 1983 (in a tribal discussion paper), the environmental laws that EPA administers (such as the CWA) apply to all lands within the U.S. including Indian lands, as general statutes apply to all persons including Indians. *See Federal Power Comm'n v. Tuscarora Indian Nation*, 362 U.S. 99, 116-18 (1960). Thus, EPA understood in the 1980s that Maine was historically required to, and did, promulgate and obtain EPA-approval for its WQS (including its designated uses) under the CWA for all Maine waters, including tribal waters. This was consistent with EPA’s WQS guidance issued in 1972, 1983, and 1988, each of which state that WQS are required for all waters within the U.S.

System, Maine deliberately chose to protect Maine's entire general population only with respect to its designated use of "fishing" for all of Maine's surface waters. Under EPA's regulations, Maine's "fishing" use has been the Maine WQS/designated use in effect for CWA purposes since its adoption by Maine and submission to EPA, 40 C.F.R. §§ 131.21(c)-(e). With respect to fishing, and in keeping with EPA's guidance, Maine made a risk management decision not to protect more specific population groups such as Maine's tribes as the "general target population" of any more focused use, such as EPA's new "sustenance fishing" use. (See EPA's Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000), EPA-822-B-00-004 (October 2000), §§ 2.1 (identifying the population to protect; "criteria could be set to protect those individuals who have average or "typical" exposures. . ."), 4.3.3.1 ("If a State or authorized Tribe has not identified a separate well-defined population of high-end consumers and believes that the national data . . . are representative, they may choose these recommended rates. . ."); see also Ex. 1, Second Amended Complaint, ¶¶ 78-87).

In addition, and as noted above, in 2002 the Maine Legislature expressly considered and rejected a controversial proposal to establish this kind of a "subsistence" fishing designated use, which – if adopted by Maine – would have protected defined subsistence fishers as a "target" population for a limited stretch of the Penobscot River only. (See Ex. 6). This is something that Maine could have done voluntarily outside of the context of the 1980 Acts, but that EPA could not (and cannot) force Maine to do as a matter of federal law, as such action would violate both the 1980 Acts and Maine's State role under the CWA.

6. **To protect its new designated use of “sustenance fishing,” EPA unlawfully relies on aspirational tribal fish consumption data based on historical estimates in an EPA-funded tribal study instead of Maine’s already EPA-approved actual local data.**

Even assuming that Maine had itself chosen to adopt a designated use of “sustenance fishing” in order to protect tribal members only instead of Maine’s general population, which Maine purposely did not do, EPA unlawfully relies on vague historical anthropological estimates in an EPA-funded tribal study (the Wabanaki Cultural Lifeways Scenario (“Wabanaki Study”)) in support of EPA’s new elevated fish consumption rate (“FCR”) that it claims is required when developing HHC in Indian waters in order to protect EPA’s new designated use. 81 Fed. Reg. at 23245-46. EPA’s reliance on this aspirational Wabanaki Study over Maine’s actual local consumption data from 1990 violates the 1980 Acts, the CWA, and EPA’s own guidance, and does not factually support EPA’s new elevated tribal FCR.

According to EPA, the Wabanaki Study was EPA-funded and conducted by the Aroostook Band of Micmacs on behalf of all Maine Indian tribes pursuant to a grant awarded by EPA (81 Fed. Reg. at 23246), all of which occurred without the knowledge or involvement of Maine’s Department of Environmental Protection (“DEP”). Maine, which has the primary authority and responsibility under the CWA to establish WQS for all Maine waters, including designated uses and HHC to protect its chosen uses, was never provided with a copy of or informed about the 2009 Wabanaki Study, even though the study was designed to support EPA’s review and/or development of tribal-based WQS in Maine based on elevated tribal FCRs. 81 Fed. Reg. at 23246. In fact, Maine DEP first learned of the Wabanaki Study in connection with EPA’s issuance of its February 2, 2015 Action. This secretive EPA approach is in full keeping with EPA’s practice in recent years of consulting with Maine’s Indian tribes only behind closed

doors regarding the development of WQS for Maine's Indian waters. (See Ex. 1, Second Amended Complaint, ¶¶ 110-125).

The Wabanaki Study relied upon by EPA in the Proposed Maine Rule is also irrelevant because it is based on historical evidence from the 16th through 19th centuries and has no bearing on actual tribal FCRs, either current tribal FCRs or those at the time the 1980 Acts were enacted. Thus, even if the 1980 Acts contemplated a separate designated use of tribal "sustenance fishing," which they do not, any consumption levels that such a use could arguably protect would be those existing at the time of the 1980 Acts – not levels based on estimates from as early as the 16th century. There is also nothing in the CWA that supports EPA's abandonment of sound science in favor of historical anthropological estimates as support for present day FCRs.

EPA also states that it "consulted with the tribes in Maine about the Wabanaki Study and their sustenance fishing uses of the waters in Indian lands" (81 Fed. Reg. at 23246), but cites nothing in the Proposed Maine Rule resulting from these private consultations that would support any actual elevated tribal FCRs. Without citing any evidence, EPA also states that the Wabanaki Study reflects a former tribal lifestyle in Maine that "some tribal members practice today." 81 Fed. Reg. at 23246. EPA also cites no evidence, and Maine is aware of none, of any actual present day (or even 1980 era) FCRs for any Maine tribal population at the levels in the aspirational Wabanaki Study or in EPA's Proposed Maine Rule.

If anything, the Wabanaki Study shows that EPA's proposed elevated tribal FCR does *not* reflect any actual current (or 1980) tribal consumption patterns. See 81 Fed. Reg. at 23246 ("There has been no contemporary local survey of current fish consumption, adjusted to account for suppression, that documents fish consumption rates for sustenance fishing in the waters in Indian lands in Maine."); see also *id.* at 23246-47 (acknowledging "uncertainties associated with

a lack of knowledge about tribal exposure in Maine Indian waters,” that “contemporaneous populations of anadromous species in Penobscot waters are too low to be harvested in significant quantities,” and that the “Wabanaki Study presented estimates” of historical consumption only and “not the amount consumed”). In these respects, EPA’s Proposed Maine Rule is unsupported by EPA’s own primary evidence.

In addition, EPA’s assertion that the Wabanaki Study represents the “best currently available information” (81 Fed. Reg. at 23246) to establish FCRs for Maine Indian waters is wrong. As EPA acknowledged in the February 2, 2015 Action (Attachment A at pp. 37-38), Maine previously relied on actual 1990 local consumption data (in the form of EPA-preferred method of statewide surveys) to support its highly protective statewide FCR, which was based on sound science and approved by EPA. (See Ex. 1, Second Amended Complaint, ¶¶ 87-92). As EPA noted in its February 2, 2015 Action (Attachment A at p. 38), 11% of the participants in that 1990 EPA-approved, local statewide survey were Native Americans. EPA’s only new concern with this data, as outlined in the February 2, 2015 Action, is that it does not reflect “unsuppressed sustenance fish consumption in tribal waters” – new EPA requirements that have no legal basis under the CWA and are unlawful under the 1980 Acts.

- 7. To protect its new designated use of “sustenance fishing” in Maine, EPA unlawfully adds a new tribal requirement that any FCR used to develop HHC must be “unsuppressed” by tribal pollution concerns.**

In its Proposed Maine Rule, EPA proposes a significantly elevated tribal FCR (286 grams/day as compared to Maine’s already EPA-approved and highly protective statewide FCR of 32.4 grams/day for the general population), which EPA, without any evidence or legal support, claims is required for purposes of its new designated use and “represents present day sustenance-level fish consumption, unsuppressed by pollution concerns.” 81 Fed. Reg. at 23245-

47. Thus, EPA's Proposed Maine Rule and its underlying February 2, 2015 Action reflect a new EPA requirement (formerly a mere preference at most), that FCRs used to derive HHC for Indian waters reflect tribal FCRs "unsuppressed by pollutant concerns." 81 Fed. Reg. at 23244-45.

Maine is aware of nothing in either the CWA or any EPA regulation under the CWA that authorizes or provides legal support for EPA's new requirement of the use of tribal FCRs "unsuppressed by pollutant concerns." Indeed, EPA cites no such CWA or regulatory authority in support of its new requirement, but instead relies on its assertion of its "scientific and policy judgment" that EPA alleges was "necessary and appropriate" to protect EPA's own newly created designated use of tribal "sustenance fishing." 81 Fed. Reg. at 23245. EPA's only cited authority for its new requirement of "unsuppressed" tribal FCRs is an informal EPA January 2013 "Frequently Asked Questions" document concerning HHC and FCRs generally, which, according to EPA, "generally recommends" the use of FCRs unsuppressed by concerns over the safety or availability of fish, *id.* at 23244 & n. 17, and which was itself never the subject of any public input or comment process.⁷ In fact, EPA has never engaged in *any* public hearings, comment, or other process with respect to its new tribal policy of forcing States to use "unsuppressed" tribal FCRs. (See Ex. 7, which is incorporated herein by reference, at ¶¶ 15-

⁷ EPA's January 18, 2013 FAQ document also contains an express disclaimer that it does not "impose legally binding requirements on [EPA], states, tribes, or the regulated community..." The FAQs also undercut EPA's position by reaffirming EPA's prior guidance allowing States to lawfully choose a cancer risk level of 1 in 100,000 for the general population, and limiting the risk to 1 in 10,000 "for any sensitive sub-population (such as those who may consume a great deal more fish because of a subsistence lifestyle)." Because FCRs and cancer risk levels are relative, these EPA-approved State options, when combined with Maine's general FCR of 32.4 grams/day at Maine's conservative risk level of 1 in 1,000,000, equate to FCRs of 324 grams/day (at a risk level of 1 in 100,000) and 3240 grams/day (at a risk level of 1 in 10,000) – FCRs that greatly exceed the new FCR required by EPA in its Proposed Maine Rule (286 grams/day). In this way, Maine's existing HHC are scientifically defensible, adhere to EPA guidance, and far exceed EPA's requirements for the protection of both Maine's general population and Maine's sensitive subsistence fishers. (See Ex. 1, Second Amended Complaint, ¶¶ 78-92).

17).⁸ EPA's unilateral creation of this new requirement, which affords members of Maine's tribes greater rights than the rest of Maine's population, also violates the 1980 Acts and their principle of equal environmental regulatory treatment for all Maine citizens.

As far as Maine is aware, EPA's February 2, 2015 Action and its Proposed Maine Rule also represent the first instances where EPA has affirmatively required "unsuppressed" tribal FCRs anywhere in the nation. (*Id.*). A partial transcript of EPA staff testimony in December 2015 before the Idaho Board of Environmental Quality (and submitted in an EPA headquarters' proceeding for the State of Washington) shows that EPA's focus on unsuppressed FCRs is a recent effort directed by EPA's national headquarters. (*See* Ex. 8, which is incorporated herein by reference). This requirement of unsuppressed FCRs, to the extent it is being applied here in Maine, also appears to have been developed in consultation with Maine's tribes without the involvement of Maine. 81 Fed. Reg. at 23247 (noting EPA's approach was "consistent with the Penobscot Nation's approach to deriving a current, unsuppressed FCR to protect sustenance fishing").

Even assuming that there is a lawful requirement that Maine use a FCR "unsuppressed by tribal pollutant concerns" when developing HHC for Maine's Indian waters, which there is not, EPA cites no surveys or other evidence (and Maine is not aware of any) detailing any actual suppression effects based on any pollution concerns by any Maine tribal populations. *See* 81 Fed. Reg. at 23246. Neither the Proposed Maine Rule nor the Wabanaki Study reference any such surveys or evidence. The Wabanaki Study relied on by EPA focuses instead on historical

⁸ As with Ex. 1, Maine requests that EPA consider as part of these proceedings and include in EPA's administrative record all exhibits to Maine's Ex. 7 (Joint Stipulations). Because EPA already has these exhibits as a result of the Pending Action, they are not being resubmitted here absent an express EPA request.

FCR estimates from the 16th through 19th centuries, and does not establish or support any present day tribal FCRs, let alone document any actual suppressive effects on such FCRs based on pollution concerns. Indeed, other factors such as historical loss of habitat and/or other reductions in fish populations are equally (if not more) likely to explain the absence of any present day FCRs at the elevated levels in the aspirational Wabanaki Study and in the Proposed Maine Rule.⁹

8. The scope of the Maine waters subject to EPA's newly created designated use of "sustenance fishing" is overly broad, vague and indefinite, and unlawful.

The waters contemplated by EPA's February 2, 2015 Action underlying the Proposed Maine Rule are themselves vague, indefinite, and unsupported, because the February 2, 2015 Action does not define EPA's concept of "Indian waters" or the scope of that prior action. Instead, the February 2, 2015 Action (at Section 1.4.1, pp. 6-7) vaguely incorporates "waters adjacent to land held in trust" for tribes by the federal government, disputed reservations, and additional common law rights with uncertain application to Maine tribes, yet still acknowledges "remaining uncertainties" in areas such as the Penobscot and St. Croix rivers.

At the outset, the scope of EPA's vague and indefinite concept of "Indian waters" at issue in the February 2, 2015 Action (underlying the Proposed Maine Rule) is overly broad, contrary to the CWA and EPA's tribal WQS regulations, and unlawful, as the scope of those waters impermissibly encompasses indefinite waters adjacent to trust lands in addition to reservation waters. This is significantly broader than the limits of any WQS program that any authorized tribe could lawfully establish under the CWA's tribal TAS provisions and related regulations, which confine such tribal WQS programs to water resources within tribal reservation borders.

⁹ For purposes of setting its tribal FCR in the Proposed Maine Rule, EPA also simply assumes, without any evidence, that the insufficiency of anadromous fish (*i.e.* fish that is "now less available") shifted tribal diets towards inland non-anadromous species. *See* 81 Fed. Reg. at 23247. This is yet another unsupported aspect of EPA's Proposed Maine Rule.

See 40 C.F.R. § 131.8(a)(3); *see also Wisconsin v. EPA*, 266 F.3d 741, 746 (7th Cir. 2001). In this respect, EPA is unlawfully attempting to expand tribal influence over water quality regulation beyond what is contemplated by or permissible under the CWA and EPA's own regulations.

The Proposed Maine Rule does not clarify or limit the scope of the waters affected by the rule or EPA's new designated use of "sustenance fishing," which remains overly broad, vague and indefinite, and unlawful. Although EPA provides some additional information regarding the scope of waters at issue in the Proposed Maine Rule (*see* Section II(C), 81 Fed. Reg. at 23242-43 and n.8-9, and the new EPA supporting Technical Support Document, both entitled "Scope of Waters"), the same underlying problems regarding the scope of affected waters persist, and new uncertainties are raised. For instance, the Proposed Maine Rule vaguely states that it will apply to "[a]ny waters in Indian lands in Maine for which a court in the future determines that EPA's 2015 disapprovals of HHC for such waters were unauthorized and that Maine's existing HHC are in effect." *Id.* at 23243. In addition to undercutting the lawfulness of EPA's underlying February 2, 2015 Action as well as EPA's authority to disapprove Maine's HHC in that action, this statement also serves as proof of the inherently vague and indefinite nature of the Proposed Maine Rule.

The Proposed Maine Rule also states that the rule and EPA's new designated use of "sustenance fishing" are intended to open-endedly apply to protect the Southern Tribes *wherever* they ultimately have a limited right to take fish pursuant to MIA's Section 6207(4), which has yet to be finally determined. *Id.* at 23243, n.9.¹⁰ Thus, the scope and intended effect of EPA's

¹⁰ EPA's technical "Scope of Waters" document (at pp. 2, 4-5) also acknowledges that portions of its Proposed Maine Rule may apply outside of Indian lands based on the holding in *PIN v. Mills*, No. 1:12-cv-254-GZS, 2015 U.S. Dist. LEXIS 169342 (D. Me. Dec. 16, 2015) regarding the geographic scope of

Proposed Maine Rule are knowingly based on multiple uncertainties, which hinge on the resolution by federal courts of the Pending Action (addressing Maine's challenge to the February 2, 2015 Action, currently pending in the United States District Court for the District of Maine), *PIN v. Mills* (addressing disputes over the ownership of portions of the Penobscot River and the limited right to take fish in MIA Section 6207, currently on appeal to the First Circuit Court of Appeals), and possibly other actions.

EPA's supporting "Scope of Waters" technical document adds further uncertainty to the application of the Proposed Maine Rule and EPA's new designated use of "sustenance fishing." For instance, this document asserts (at p. 3) that the Proposed Maine Rule and the new designated use of "sustenance fishing" may apply to the "thread" (*i.e.*, generally the middle) of waters adjacent to tribal trust lands, which creates uncertainty based on the potential existence of multiple different designated uses in a single body of water, separated by an invisible line in the water representing the water's "thread." As noted above, the application of any EPA rule to waters adjacent to tribal trust lands would also be impermissibly broad, as no tribal WQS program could lawfully have such an extended reach under the CWA's tribal TAS provisions and related regulations.

The "Scope of Waters" document further suggests (at p. 3) that the waters subject to EPA's Proposed Maine Rule and its new designated use of "sustenance fishing" may also be enlarged in the future through the acquisition of additional trust lands on behalf of any Maine tribe.

the limited right to take fish in MIA's Section 6207(4), and that the extent of the application of its new designated use of "sustenance fishing" is currently unknown.

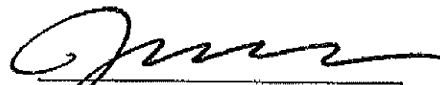
The "Scope of Waters" document also announces (at pp. 3-4) that EPA will adhere to its own expansive interpretation of the District of Maine's decision in *PIN v. Mills*, No. 1:12-cv-254-GZS, 2015 U.S. Dist. LEXIS 169342 (D. Me. Dec. 16, 2015). This EPA interpretation, which is contrary to the actual District Court holding and disputed by Maine, creates additional uncertainty by suggesting that EPA believes that there may be additional tribal rights in waters around the outside of the PIN reservation based on "common law riparian rights in the river."

Finally, the "Scope of Waters" document suggests (at pp. 4-5) that EPA believes that there may be similar additional tribal rights in waters in and around the reservation of the Passamaquoddy Tribe in the St. Croix River, which EPA suggests would also be subject to the Proposed Maine Rule and the new EPA designated use of "sustenance fishing." Such rights in that waterbody have never been established by law and would likely be vigorously contested by both Canadian and U.S. parties, were they to be asserted

For all of these reasons, the scope of EPA's Proposed Maine Rule is overly broad, vague and indefinite, and unlawful.

Dated: June 14, 2016

JANET T. MILLS
ATTORNEY GENERAL



JANET T. MILLS
6 State House Station
Augusta, ME 04333-0006
(207) 626-8800

**COMMENTS OF MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
COMMISSIONER PAUL MERCER ON THE EPA PROPOSED
WATER QUALITY STANDARDS FOR MAINE**

June 20, 2016

On April 20, 2016, EPA published proposed water quality standards (“WQS”) for the State of Maine. 81 Fed. Reg. 23239 (April 20, 2016). These comments are submitted in response to those proposed standards. Overall, EPA’s proposed WQS, especially to the extent that they are unique to unspecified tribal waters in the proposed Maine rule, are unnecessary and should be withdrawn. Maine presently maintains highly protective WQS statewide, which were approved by EPA over the past approximately thirty years. The following comments highlight the adverse impact EPA’s proposed rule will have on the regulatory environment in Maine and the licensing process managed by the Maine Department of Environmental Protection (“Department”), as well as the lack of benefit to Maine’s environment and to the protection of human health that would result from EPA’s proposed new WQS.

Comments from Janet Mills, Maine Attorney General

EPA claims authority to act pursuant to Section 303(c) of the Clean Water Act (“CWA”); 33 U.S.C. § 1313, and 40 C.F.R. §§ 131.5, 131.6, 13.11 and 131.21. EPA identified its February 2, 2015 disapprovals of Maine’s WQS and its proposed federal WQS in the proposed rule as being “necessary” to meet CWA requirements, most notably by claiming that existing Maine WQS (Maine’s human health criteria, or “HHC”) are insufficient to protect designated uses,

including EPA's own, newly-created designated use of "sustenance fishing." 81 Fed. Reg. 23241-23247. The Department disputes EPA's underlying determination of necessity because, among other things, EPA wrongfully relies upon and presumes the lawful establishment of a new designated use of "sustenance fishing" for unspecified tribal waters, which is a use that was never adopted by Maine. This and other legal concerns with EPA's proposed Maine rule are more fully addressed by the comments filed by Maine Attorney General Janet Mills on June 14, 2016, which are incorporated into these comments in their entirety by reference. In addition to the points raised by Attorney General Mills, the Department further comments as follows:

Tribal Waters

Beyond the points raised by Attorney General Mills regarding this issue, the Department has serious concerns about the impact of the overly broad, vague and indefinite language used to define EPA's concepts of "Indian waters" and "waters where the Southern tribes have a right to sustenance fish" on the regulatory and licensing process. Without clear definitions of such waters, it is impossible for the Department's permit writers to develop permit limits that are reflective of applicable standards, make many important permitting decisions, or even identify which facilities may be affected by EPA's proposed rule.

In addition, absent a clear definition of all Maine waters covered by the proposed rule, it would appear impossible for EPA (or anyone else) to perform an accurate or meaningful economic impact analysis. Without knowing exactly which facilities will be affected by the proposed rule, the Department (and presumably EPA) cannot measure or even estimate the economic impact or cost to Maine's communities and businesses that may need to upgrade systems or engage in other capital expenditures to meet EPA's new WQS. Indeed, it is unclear

the extent or whether the EPA factored in these possible costs to point source dischargers in its estimates. Additionally, for non-point discharges, EPA itself stated that it “did not fully evaluate the potential for costs to nonpoint discharges...” 81 Fed. Reg. 23259.

Fish Consumption Rates (FCR) and Excess Cancer Risk Factor

Beyond the points raised by Attorney General Mills regarding these issues, the Department urges EPA not to consider any values from the anecdotal Wabanaki Cultural Lifeways Exposure Scenario (“Wabanaki Report”) to develop FCR. 81 Fed. Reg. 23245-47. While the Wabanaki Report holds some anthropological value, extending its reach to regulatory standards is inappropriate. The Wabanaki Report is entirely subjective and aspirational, and is based on outdated historical estimates rather than on any actual consumption data for the population that EPA seeks to protect with its new designated use of “sustenance fishing.” 81 Fed. Reg. 23246. The Wabanaki Report is certainly not the best available evidence for Maine FCR purposes, especially in light of the existence of the 1990 study based on actual local consumption data that was used to develop Maine’s current statewide FCR of 32.4 grams/day at a 10^{-6} cancer risk level. In the Department’s view, the Wabanaki Report is not even competent evidence, and is simply not the kind of reliable evidence that the Department would consider when establishing enforceable permit limits. It should not be used as support for EPA’s newly proposed tribal FCR of 286 grams/day, or for any other purpose.

Even so, in light of the acceptable range of protections outlined in EPA’s 2000 Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (“2000 Guidance”), EPA’s proposed HHC based on its new FCR of 286 grams/day are simply

not required in order to achieve an acceptable level of protection (*i.e.*, to meet the requirements of the CWA) because Maine's existing statewide FCR of 32.4 grams/day at a 10^{-6} cancer risk level already achieves what EPA considers to be an acceptable level of protection. For instance, if an individual consumed 10 times the amount of fish contemplated by Maine's current FCR (or 324 grams/day), he or she would still be protected to an EPA-acceptable risk level of 10^{-5} . Similarly, if an individual consumed 100 times Maine's current FCR (3240 grams/day, *or over 7 pounds of fish per day*), he or she would still be protected to at least a 10^{-4} risk level, which, under EPA's 2000 Guidance, is also acceptable and adequately protective of sport and subsistence fishers. The Department is unaware of any evidence suggesting actual consumption anywhere near these levels, and doubts that it exists. But even assuming the existence of such consumption levels, Maine's existing FCR of 32.4 grams/day at a 10^{-6} cancer risk level is still adequately protective of all Maine-promulgated designated uses based upon the acceptable range of protections set forth in EPA's own 2000 Guidance, and there is no necessity for any higher FCR in order to meet the requirements of the CWA. Any determination of EPA necessity here is thus based purely on EPA's own, more recent risk preferences, and not on any requirements of EPA's 2000 Guidance or the CWA.

EPA's attempt to force Maine to protect tribes using an elevated 286 grams/day FCR at a 10^{-6} cancer risk level also may not result in any statistically relevant levels of protection. EPA's 2000 Guidance is structured to account for a broad range of consumption rates (90th to 99th percentile). A recent white paper by ARCADIS (Summary of Health Risk Assessment Decisions in Environmental Regulations, March 6, 2015), notes that the impact of the conservative approach of EPA's 2000 Guidance results in significantly higher levels of protection from the development of one excess cancer due to exposure to chemicals in the environment. Under

principles of compound conservatism, protection to the 95th percentile based on exposure, and amount of fish consumed, and total number of years consuming, protects significantly more than the 95th percentile for each of those variables individually. In their example, protecting to the 95th percentile (or 9,500 out of 10,000, which is equivalent to 10⁻⁴ risk level) actually protects to the 99.78th percentile when considering the combined impact of each assumption in EPA's 2000 Guidance. Factoring in these same assumptions to Maine's WQS clearly results in protection for more highly exposed subgroups not exceeding the 10⁻⁴ level. The ARCADIS paper shows that the proposed EPA standards protect well beyond that required by EPA's 2000 Guidance, and that Maine's WQS, especially combined with principles of compound conservatism are well within the acceptable range of protection for exposed subgroups authorized by EPA's 2000 Guidance.

pH

EPA proposes a new range of pH criterion for Maine's Indian waters only. 81 Fed. Reg. 23255. The Department maintains that the original pH standard of 6.0 to 8.5 was already approved by the EPA and is the valid standard for discharges in Maine statewide. This standard is fully protective of aquatic life and protects recreation in and on the water; 99% of the river and stream miles in Maine are at Class B or higher with 95% meeting standards, including biological structure and function. Almost all of the non-attainment is due to either nutrients or an aspect of run-off (metals, chlorides, bacteria, etc.). Regardless, the pH range is the measure of stringency, not the actual values. EPA's range of 6.5-9.0 is just as protective as the former pH standard. The Department's biologists believe that a range of 6.0 to 8.5 provides better Maine habitat than does the range of 6.5 to 9.0, noting that several functioning Maine streams naturally fall below the 6.0 lower threshold. Additionally, the Department has measured pH below 6.5 where, based on the

Department's monitoring, waters are considered to be attaining Maine's aquatic life criteria. The Department believes that a pH of 9.0, however, approaches levels toxic to Maine fish and other aquatic life. Therefore, the Department would like to maintain the current pH range of 6.0-8.5 for the health of the Maine's streams and rivers.

Bacteria

EPA proposes new recreational bacteria criteria for Maine's Indian waters in part because Maine's existing criteria do not apply to naturally occurring (*i.e.*, wildlife) fecal sources. 81 Fed. Reg. 23254. Under the CWA, States such as Maine have the primary responsibility of preventing, reducing, and eliminating "pollution," 33 U.S.C § 1251(b), which is defined by the CWA as "man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water." 33 U.S.C § 1362(19). Thus, the CWA regulates human pollution, and not wildlife, and EPA's proposal of WQS designed to regulate "wildlife sources" of bacteria in Maine's Indian waters is beyond the scope of the CWA.

The November 5, 1997 guidance cited by EPA states that, "(f)or human health uses, where the natural background concentration is documented, this new information should result in, at a minimum, a re-evaluation of the human health designation." "Establishing Site Specific Aquatic Life Criteria Equal to Natural Background." ("1997 Guidance"). The 1997 Guidance stands for possible reevaluation of uses based on known background concentrations not establishing criteria which necessitates regulation of naturally occurring bacteria, hence, the existing Maine rule excepts bacteria sources from wildlife. Bacteria from natural sources are likely to be temporal, therefore removing a use (recreation in and on the water) simply due to a

high level E. coli an organism that is used as an indicator of human sewage, which does not include E. coli of natural origins is, at best, unwise. EPA's source, the 2012 Recreational Water Quality Criteria ("2012 RWQC"), is unconvincing regarding the expected impact of non-human sources of bacteria causing human health risks. EPA incorrectly construes "animal sources" of bacteria from studies as equivalent to naturally occurring "wildlife sources" used in the proposed rule. When directly linking human health concerns to "wildlife" sources, EPA's 2012 RWQC indicate, "sources of fecal contamination in these waters were not identified;" or wildlife, "could not be confirmed as the primary source of the zoonotic pathogens", or worse, "found a lack of a statistical association between swimmers' illness risk and FIB (fecal indicator bacteria) levels in a rural fresh waterbody impacted by animal fecal contamination; Calderon et al. (1991)." EPA only directly cited one study to link potential human health risks with non-human sources of fecal contamination. That study, from New Zealand, linked human health risks to agricultural sources (presumably cattle, not wildlife) and qualified that the relationship was "unlikely to hold in all waters" (2012 RWQC, section 3.5 1-2).

The Department also opposes the EPA's proposal to apply these criteria year round. States may adopt seasonal uses pursuant to 40 C.F.R. 131.10. The information cited by EPA as indicating potential recreational activities in or on the water after October 1 continued for only a few days after October 1, and are located several miles upstream of any point source discharge. Neither source cited by EPA offers these activities in October 2016. These activities are unaffected by seasonal chlorination of wastewater and we found no documentation of other recreational activity specific to the Penobscot River.

The proposed rule also utilizes total coliform bacteria and makes reference to using this indicator organism as it is consistent with the National Shellfish Sanitation Program (NSSP);

however, the NSSP program allows states to use fecal coliform bacteria as an indicator also. *E. coli* is an indicator organism because it is easier to detect and quantify than pathogenic organisms of concern. Maine has written permits limiting fecal coliform bacteria (not total coliform) to 15/100 ml as a geometric mean and 50/100 ml as a daily maximum in marine waters for several years. They were written this way to be consistent with Maine Department of Marine Resources sampling program which uses fecal coliform bacteria as their indicator parameter when making opening/closure decisions. The NSSP establishes a geometric mean of 14/100 ml and not more than 10% of the samples shall exceed a most probable number (MPN) of 49/100 ml. It is much easier to write and determine compliance with a permit if the daily maximum limit is one numeric value that is not conditioned 10% of samples exceeding MPN. The Department suggests EPA continue to focus on organisms and standards that are currently regulated. Both are consistent with the NSSP and a more straightforward method for addressing bacteria in shellfish areas than EPA's approach.

Temperature

EPA proposes to limit the weekly average monthly rise in ambient temperature to 1.8°F during all seasons of the year provided the weekly average summer maximum of 64.4°F is not exceeded. The summer season is defined as May 15 – September 30. EPA's proposal is less stringent during the summer season (1.8°F vs 1.5°F) more stringent than the non-summer months (1.8°F vs 4.0°F) and more stringent as a daily maximum (64.4°F vs 85°F), compared to Maine's current temperature regulations.

The above criteria must be compared to baseline thermal conditions. The baseline thermal conditions shall be measured or modeled from a site where there is no artificial thermal addition from any source and which is in reasonable proximity to the thermal discharge (within 5 miles) and has similar hydrography to that of the receiving waters at the discharge. This will be problematic given the issues with reference sites being representative the Department has encountered over the years in the aquaculture general permit. It also begs the question: what are the seasons (assuming four seasons with summer already defined as May 15 – September 30) and should a baseline be established for each season?

Timing

In the Department's view, EPA's haste to promulgate these standards is unwise given the degree of impact expected. The need for additional time is evident for all parties, including EPA, to adequately address the process. Impacted parties and other commenters have expressed interest in extending the deadline for comments so that the impact of the proposed standards can be more carefully considered. The Department has similar concerns about whether a sufficient degree of care was used by the EPA in promulgating these standards. For instance, in addition to deficiencies in economic impact analysis mentioned, the Department has noticed errors in the WQS, such as the listing of a non-priority pollutant, Bis(2-Chloro-1-Methylethyl) Ether, in EPA figures.

EPA developed and has now proposed WQS for Maine, citing their obligation under the CWA to do so if the State has not made sufficient progress towards rectifying the disapproved standards. EPA has been informed numerous times that there are several WQS that will require

changes in statute. EPA has been informed numerous times that the next legislature will not convene until January 2017, therefore legislative changes will have to be tabled until that time.

In addition, in docket filings dated June 16, 2016, EPA denied requests by several commenters to extend the comment period in order to address the many important issues implicated by EPA's proposed Maine rule. In its denials of those requests, EPA stated: "Our primary concern with extending the comment period is that for many pollutants there are currently no criteria for Clean Water Act purposes, including most human health criteria for waters in Indian lands." This explanation of the apparent urgency surrounding the promulgation of EPA's proposed Maine WQS makes no sense because EPA's new approach in Maine is the cause of the regulatory void that EPA now scrambles to address. EPA's current position, which the Department disputes, is that prior to EPA's February 2, 2015 action, there had never been any WQS of any kind, including HHC, in effect and requiring attainment for any CWA purposes for any of EPA's unspecified Indian waters in Maine. If EPA had truly believed that such a gaping void in protection (and a clear violation of the CWA) had always existed due to the lack of any EPA-approved WQS for such waters, as EPA now claims (and the Department disputes), EPA has had decades to address the regulatory void, as Maine's WQS date back to the mid-1980s. If there is any sudden urgency now, it is entirely the result of EPA's changed position with respect to Maine underlying its February 2, 2015 disapprovals of Maine's WQS for Indian waters and its rushed promulgation of this proposed Maine rule. EPA has already failed to provide the public with any opportunity to comment on other critical aspects of its novel new approach to WQS in Maine – most notably with respect to EPA's creation of its new designated use of "sustenance fishing" and its new requirement that "unsuppressed" tribal FCRs be used to develop criteria to protect tribal rights. EPA should not further compound the problem by

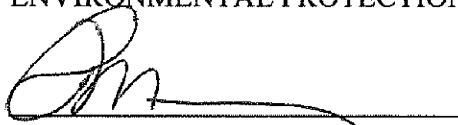
restricting the duration of the public comment period and rushing the process with respect to this proposed Maine rule.

Conclusion

In summation, the Department maintains that the WQS approved by EPA over the past thirty years are still valid and in force, and are fully protective of all existing, Maine-promulgated uses. These comments are provided to demonstrate the potential added for unnecessary complexity in permitting and compliance activities should these proposed standards be promulgated. For these reasons, EPA should withdraw these rules.

Dated: June 20, 2016

PAUL MERCER
COMMISSIONER
MAINE DEPARTMENT OF
ENVIRONMENTAL PROTECTION

A handwritten signature in black ink, appearing to be 'PM', followed by a horizontal line.

PAUL MERCER
17 State House Station
Augusta, ME 04333-0017
(207) 287-7688

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

STATE OF MAINE, and
AVERY DAY, in his capacity as
Acting Commissioner of the Maine
Department of Environmental Protection,

Plaintiffs,

v.

GINA MCCARTHY, in her capacity as
Administrator, United States
Environmental Protection Agency, and H.
CURTIS SPALDING, in his capacity as
Regional Administrator of the United
States Environmental Protection Agency
(Region 1),

Defendants.

Civil Action No: 1:14-cv-264-JDL

SECOND AMENDED COMPLAINT

Introduction

1. Plaintiffs State of Maine and Avery Day, Acting Commissioner of the Maine Department of Environmental Protection (“DEP”) (collectively “Plaintiffs” or “Maine”), bring this action to challenge the lawfulness of certain disapprovals by Defendants (collectively “EPA”) of Maine’s surface water quality standards (“WQS”) promulgated pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (“CWA”) for unspecified waters that EPA claims may be within Indian territories and lands (“Indian Waters”). The challenged EPA disapprovals and rationale, which effectively establish different WQS for Maine’s Indian tribes than for Maine’s other citizens, are set forth in a letter sent by EPA’s Region 1 to Maine dated February 2, 2015, and a 51-page “Attachment A” to that letter (collectively EPA’s “February 2, 2015 letter,” a copy of which is attached hereto as Exhibit 1).

2. Maine's environmental regulatory jurisdiction over all intrastate waters, including Indian Waters, has long been established by the Maine Implementing Act, 30 M.R.S. §§ 6201 *et seq.* ("MIA") and the federal Maine Indian Claims Settlement Act, 25 U.S.C. §§ 1721 *et seq.* ("MICA") (collectively the "1980 Acts"), and was reaffirmed by the First Circuit Court of Appeals in *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007).

3. Under the 1980 Acts, Maine's WQS, including Maine's designated uses of its intrastate waterbodies (set forth in Maine's established Water Classification Program, 38 M.R.S. §§ 464 *et seq.*) and Maine's water quality criteria designed to protect its designated uses, apply throughout Indian Waters to the same extent and in the same manner as those WQS apply to other Maine waters. (30 M.R.S. § 6204; 25 U.S.C. §§ 1725(a) & (b)(1), 1725(h), 1735(b)).

4. Similarly, under the 1980 Acts, members of Maine's Indian tribes have no special or greater status or rights with respect to water quality and are subject to Maine's WQS to the same extent and in the same manner as the rest of Maine's general population. (30 M.R.S. § 6204; 25 U.S.C. §§ 1725(a) & (b)(1), 1725(h), 1735(b)).

5. In 2004, however, EPA began limiting its approvals of Maine's WQS to non-Indian Waters only, while taking no action on Maine's WQS for Indian Waters, in contravention of the CWA, the 1980 Acts, and *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007). As a consequence, and with no other remaining extra-judicial options, Maine resorted to filing this action in 2014, which originally sought to force EPA to honor Maine's statewide environmental regulatory jurisdiction to set WQS for all intrastate waters, including Indian Waters, and to act on Maine's outstanding WQS for its Indian Waters.

6. In response, and while this action was pending, EPA issued its February 2, 2015 letter, which generally does two things: first, it belatedly but correctly determines that Maine has

statewide environmental regulatory authority under the 1980 Acts to set WQS for all Maine waters, including Indian Waters, consistent with *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007). (Exhibit 1, Attachment A, pp. 2, 7-10). However, EPA's February 2, 2015 letter then unlawfully disapproves certain Maine WQS (human health water quality criteria) for Indian Waters based on an intricate rationale, announced for the first time in the February 2, 2015 letter, that is built on a series of unlawful determinations that EPA employs to try to get around the 1980 Acts and *Maine v. Johnson* and reach an apparently pre-determined result – EPA's disapproval of Maine's human health criteria for Maine's Indian Waters only. (Exhibit 1, Attachment A, pp. 2-3, 10-44).

7. EPA's disapprovals of Maine's WQS for Indian Waters affords members of Maine's Indian tribes special rights and a status that is greater than the rest of Maine's general population in violation of the 1980 Acts, the CWA, and *Maine v. Johnson*.

8. EPA's February 2, 2015 letter also suggests that any separate WQS ultimately implemented for Maine's Indian Waters will have a regulatory reach beyond those Indian Waters into Maine's non-Indian Waters within the same watersheds, which irresponsibly disrupts settled regulatory expectations and creates uncertainty with respect to Maine's long-standing Water Classification Program. (Exhibit 1, Attachment A, p. 11).

9. The many unlawful aspects of EPA's February 2, 2015 letter that EPA relies on to ultimately disapprove Maine's human health criteria for Maine's Indian Waters include, without limitation, the following:

- EPA unlawfully asserts that, prior to February 2, 2015, no WQS were ever in effect for Maine's Indian Waters, even though EPA historically (*i.e.*, pre-2004) approved Maine's WQS without qualification as to their effect in Indian Waters, and has acted as if those WQS were in effect for Indian Waters (Exhibit 1, Attachment A, p. 14);
- EPA unlawfully asserts that its pre-2004 approvals of Maine's WQS did not extend to Indian Waters because EPA was required to make a formal threshold determination that Maine has environmental regulatory jurisdiction over its Indian Waters before

EPA could ever approve any Maine WQS for such Indian Waters (Exhibit 1, Attachment A, pp. 14-15);

- EPA unlawfully asserts that its historical recognition of and acquiescence to the application of Maine's WQS in Indian Waters was the result of individual mid-level EPA mistakes (Exhibit 1, Attachment A, p. 15);
- EPA unlawfully asserts that the purpose of MIA, MICSA, and each of Maine's other Indian Settlement Acts was to establish a land base from which Maine's Indian tribes could practice their unique cultures, including tribal sustenance living practices and fishing rights, free from Maine regulation (Exhibit 1, Attachment A, pp. 2, 17-28);
- EPA unlawfully asserts that Maine's WQS and the protection of Maine's existing designated uses of its waterbodies must be "harmonized" with EPA's flawed interpretation of the purpose of MIA, MICSA, and Maine's other Indian Settlement Acts (Exhibit 1, Attachment A, pp. 2, 28-30);
- EPA unlawfully interprets the narrow portions of MIA that permit members of Maine's Southern Tribes to take fish within their reservations (provided that such fish takings are for individual sustenance only) as more broadly constituting a designated use of tribal "sustenance fishing" for the Southern Tribes in their respective Indian Waters (Exhibit 1, Attachment A, pp. 2, 30-31);
- EPA unlawfully issues a new interpretation of Maine's longstanding designated use of "fishing," as used throughout Maine's Water Classification Program for all Maine waters, as instead meaning tribal "sustenance fishing" with respect to each of Maine's Indian tribes in their respective Indian Waters (Exhibit 1, Attachment A, pp. 2, 31-32);
- EPA unlawfully usurps Maine's role as a State under the CWA by establishing its own new WQS in Maine (*i.e.*, EPA's newly-created designated use of tribal "sustenance fishing") without any public input or other required process (Exhibit 1, Attachment A, pp. 2, 30-32);
- EPA unlawfully interprets its new designated use of tribal "sustenance fishing" as in turn requiring an implicit, bootstrapped right to heightened water quality in Indian Waters (and potentially beyond) in order to protect the use by ensuring a higher quality of fish for tribal-only sustenance purposes (Exhibit 1, Attachment A, pp. 2-3, 12, 20-21, 27-28);
- EPA unlawfully analyzes its new designated use of tribal "sustenance fishing" in the context of a tribal-only "target" population, as opposed to Maine's general population, for purposes of establishing water quality criteria to protect that new use (Exhibit 1, Attachment A, pp. 2-3, 35-36);
- EPA unlawfully interprets its new designated use of tribal "sustenance fishing" as requiring unsuppressed tribal fish consumption rates based on a new historical tribal fish consumption "scenario" that assumes fish free from any pollution and that was

itself never the subject of any public input process (Exhibit 1, Attachment A, pp. 3, 37-41); and

- EPA unlawfully disapproves Maine's human health water quality criteria for Indian Waters as being un-protective of EPA's new tribal "sustenance fishing" designated use (Exhibit 1, Attachment A, pp. 3, 41-43).

Jurisdiction and Venue

10. The Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 701-706, 28 U.S.C. §§ 1331 & 2201-2202, and 33 U.S.C. § 1365(a)(2).

11. Venue is proper in this Court pursuant to 5 U.S.C. § 703, 28 U.S.C. § 1391, and 33 U.S.C. § 1365.

The Parties

12. Plaintiff State of Maine is a sovereign state with environmental regulatory jurisdiction over all waters within its boundaries, including Indian Waters.

13. Plaintiff Avery Day is the Acting Commissioner of the Maine DEP and has primary responsibility for the environmental protection, regulation and control of all waters within the State of Maine.

14. Defendant Gina McCarthy is the Administrator of EPA and is being sued in her official capacity. EPA is an agency of the United States and has responsibility and oversight regarding federal statutes and regulations dealing with the protection, regulation and control of waters within the United States. As Administrator, Ms. McCarthy oversaw or was responsible for EPA's February 2, 2015 letter and the positions and disapprovals of Maine's WQS contained therein.

15. Defendant H. Curtis Spalding, who is also being sued in his official capacity, is the EPA Regional Administrator for Region 1 (New England), which includes the State of Maine. Within EPA's Region 1, Mr. Spalding has responsibility and oversight regarding federal statutes and regulations dealing with the protection, regulation and control over waters within the United

States. As Regional Administrator for EPA's Region 1, Mr. Spalding oversaw or was responsible for EPA's February 2, 2015 letter and the positions and disapprovals of Maine's WQS contained therein.

Maine's Indian Settlement Acts

16. There are now four federally recognized Indian tribes in Maine represented by five governing bodies: the Penobscot Indian Nation ("PIN") and the Passamaquoddy Tribe (with two separate Passamaquoddy governing bodies) (collectively the "Southern Tribes"); and the Houlton Band of Maliseet Indians ("Maliseets") and the Aroostook Band of Micmacs ("Micmacs") (collectively the "Northern Tribes").

17. In 1980, Congress passed MICSA, which, among other things, resolved litigation in which the Southern Tribes asserted land claims to an area consisting of approximately two-thirds of the State of Maine's land mass. (25 U.S.C. §§ 1721 *et seq.*; *Aroostook Band of Micmacs v. Ryan*, 484 F.3d 41, 44 (1st Cir. 2007)).

18. MICSA also ratified MIA, a Maine law that reflects a comprehensive negotiated settlement between the State of Maine and the Southern Tribes, and that also addresses jurisdictional issues and defines the relationship between Maine and its Indian tribes. (30 M.R.S. §§ 6201 *et seq.*; *Aroostook Band of Micmacs v. Ryan*, 484 F.3d 41, 44 (1st Cir. 2007)).

19. As a result of MIA and MICSA, Maine has a nationally unique and novel relationship with its Indian tribes. (*See Akins v. Penobscot Nation*, 130 F.3d 482, 483 (1st Cir. 1997) ("The relations between Maine and the Maine Tribes are not governed by all of the usual laws governing such relationships, but by two unique laws, one Maine and one federal, approving a settlement.")).

20. In 1989, Maine passed the Micmac Settlement Act (the “Micmac Act”), which was ratified by Congress in 1991 through passage of the Aroostook Band of Micmacs Settlement Act (“ABMSA”), and which was designed to give the Micmacs the same limited settlement that had been provided to the Maliseets under the 1980 Acts (the Micmac Act, ABMSA, and the 1980 Acts are collectively referred to as Maine’s “Indian Settlement Acts”). (*Aroostook Band of Micmacs v. Ryan*, 484 F.3d 41, 56-58 & n. 20 (1st Cir. 2007); Pub. L. 102-171, Nov. 26, 1991, 105 Stat. 1143, §2(a)(5) (“It is now fair and just to afford the Aroostook Band of Micmacs the same settlement provided to the Houlton Band of Maliseet Indians for the settlement of that Band’s claims, to the extent they would have benefitted from inclusion in the Maine Indian Claims Settlement Act of 1980.”)).

21. MIA, as ratified by MICSA, generally establishes that:

Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State ***to the same extent as any other person or lands or other natural resources therein.***

(30 M.R.S. § 6204 (emphasis added), confirmed by MICSA, 25 U.S.C. § 1725).

22. Similarly, MICSA establishes that the Southern Tribes and their “lands and natural resources” are subject to Maine’s jurisdiction as provided in MIA, while the Northern Tribes:

and any lands or natural resources held in trust by the United States, or by any other person or entity, for [the Northern Tribes] shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein.

(25 U.S.C. § 1725(a) and (b)(1); 25 U.S.C. § 1725(f); *Aroostook Band of Micmacs v. Ryan*, 484 F.3d 41, 50-51 (1st Cir. 2007)).

23. Both MIA and MICSA use the same broad definition of “lands and natural resources,” which expressly includes tribal water and water rights, and tribal hunting and fishing rights. (30 M.R.S. § 6203(3); 25 U.S.C. § 1722(d)).

24. As recognized by the First Circuit Court of Appeals, Congress expressly understood that, under MICSA, Maine would retain its environmental regulatory jurisdiction and authority over Maine’s Indian lands and waters:

The Senate Report, adopted by the House Report, declared that “State law, including but not limited to laws regulating land use or management, conservation and environmental protection, are fully applicable as provided in [the proposed bill] and Section 6204 of the Maine Implementing Act.” S. Rep. 96-957 at 27; H.R. Rep. 96-1353 at 20.

(*Maine v. Johnson*, 498 F.3d 37, 43-44 (1st Cir. 2007)).

25. As recognized by the First Circuit Court of Appeals, Congress also understood that, under MICSA, any special or greater environmental status or rights afforded to Indian tribes generally, such as those under the Clean Air Act (no similar tribal provisions had yet been enacted under the CWA in 1980), would expressly *not* apply in Maine:

The Senate Report stated that “for example, although the federal Clean Air Act, 42 U.S.C. § 7474, accords special rights to Indian tribes and Indian lands, such rights will not apply in Maine because otherwise they would interfere with State air quality laws which will be applicable to the lands held by or for the benefit of the Maine Tribes. This would also be true of police power laws on such matters as safety, public health, environmental regulation or land use.” S. Rep. 96-957 at 31.

(*Maine v. Johnson*, 498 F.3d 37, 44 n.7 (1st Cir. 2007)).

26. The principle that the State of Maine’s jurisdiction and environmental laws extend throughout Maine and encompass Indian tribal “lands and natural resources” was central to the 1980 Acts, and in crafting MICSA, Congress carefully ensured that no then-existing federal Indian law of any kind would be interpreted in a manner that would call into question the applicability of Maine’s State laws to Maine’s tribes, which would upset the jurisdictional bargain that had been negotiated:

[No] law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory, or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.

(25 U.S.C. § 1725(h)).

27. Elsewhere in MICSA, Congress further secured Maine's unique tribal-State jurisdictional arrangement against *future* changes in federal law by using language that essentially tracks the language used in Section 1725(h):

The provisions of any Federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.

(25 U.S.C. § 1735(b)).

28. The combined effect of MICSA Sections 1725(h) and 1735(b) is to bar the application of any kind of federal law that accords special or greater status or rights to Indians and affects or preempts Maine's jurisdiction, unless Congress expressly makes such law applicable in Maine.

(25 U.S.C. §§ 1725(h) & 1735(b); *see also Penobscot Nation v. Stilphen*, 461 A.2d 478, 489 (Me. 1983); 68 Fed. Reg. 65052, 65057 (November 18, 2003) (EPA concluded that the combination of MICSA Sections 1725(h) and 1735(b) "prevents the general body of federal Indian law from unintentionally affecting or displacing MICSA's grant of jurisdiction to the state."); 25 U.S.C. § 1722(d) (defining "laws" of the State to include common law)).

29. The Congressional Senate Report makes clear that the application of federal Indian canons of construction was one of the specific concerns that gave rise to MICSA's Sections

1725(h) and 1735(b), and that these provisions were intended to prevent courts from applying the common law canons to questions of interpretation involving the 1980 Acts:

The phrase “civil, criminal, or regulatory jurisdiction” as used in [section 1725(h)] is intended to be broadly construed to encompass the statutes and regulations of the State of Maine as well as of the jurisdiction of the courts of the State. The word “jurisdiction” is not to be narrowly interpreted as it has in cases construing Public Law 83-280 such as *Bryan v. Itasca County*, 426 U.S. 373 (1976).

(S. Rep. 96-957, at 30-31).

30. *Bryan v. Itasca County*, 426 U.S. 373, 392 (1976), issued just four years before passage of the 1980 Acts, illustrated how federal courts generally rely (except where Congress provides otherwise) on Indian canons of construction to resolve ambiguities in statutes against states and in favor of Indians, and the Congressional Senate Report invoked *Bryan* to clarify that the *Bryan* decision’s mode of analysis – including its use of Indian canons favoring Indian tribes – was not to apply to questions arising under the 1980 Acts. (S. Rep. 96-957, at 30).

31. Indeed, during the Senate hearings, counsel for the Southern Tribes testified that the “general body of Federal Indian law” had been excluded in Maine “in part because that was the position that the State held to in the negotiations. . . [and] it is also true to say that the tribes are concerned about the problems that existed in the West because of the pervasive interference and involvement of the federal government in internal tribal matters.” (Hearings before the Senate Committee on Indian Affairs on S. 2829, 96th Cong. 2d Sess. 181-82 (1980)).

32. Similarly, before Maine’s Joint Select Committee, the same counsel for the Southern Tribes had stated:

Increasingly [during negotiations], both sides found areas of mutual interest as, for example, in the case of the General Body of Federal Indian Regulatory Law, which the tribes came to see as a source of unnecessary federal interference in the management of tribal property and the State came to see as a source of uncertainty in future Tribal-State relations.

(Transcript of March 28, 1980 Public Hearing before the Maine Joint Select Comm. on Indian Land Claims, Statement of attorney for the Southern Tribes, Thomas Tureen, *reprinted in* Me. Leg. Record (1980) at 25).

33. Overall, as the Maine Supreme Court summarized:

It was generally agreed that [the 1980 Acts] set up a relationship between the tribes, the state, and the federal government different from the relationship of Indians in other states to the state and federal governments. . . . We therefore look not to federal common law . . . but to the statute itself and its legislative history.

(*Penobscot Nation v. Stilphen*, 461 A.2d 478, 489 (Me. 1983)).

34. The First Circuit Court of Appeals has concluded that, when interpreting the 1980 Acts or other Maine Indian Settlement Acts, EPA is not to be afforded any deference. (*Maine v. Johnson*, 498 F.3d 37, 45 (1st Cir. 2007); *see also id.* at 45 & n.9-10 (also discounting a Department of Interior (“DOI”) opinion letter to EPA as non-authoritative and in apparent tension with DOI’s 1980 testimony to Congress regarding Maine’s jurisdiction under the 1980 Acts)).

***The jurisdictional effect of the
1980 Acts on the Southern Tribes***

35. With respect to the Southern Tribes, and as the First Circuit Court of Appeals has observed, “[a]t the time the Settlement Acts were adopted, the Interior Department, largely responsible for relations with Indian tribes, told Congress that the southern tribes’ lands would generally be subject to Maine law. (H.R. Rep. 96-1353 at 28 (report of the Department of the Interior).” (*Maine v. Johnson*, 498 F.3d 37, 43 (1st Cir. 2007); *see also id.* at 45 n.10).

36. This understanding was shared by the Southern Tribes, who, through their counsel during the State hearings, explained:

In light of all this, one might ask why the Indians were willing to even discuss the question of jurisdiction with the State but simply the answer is that they were obliged to do so if they wanted to effectuate the Settlement of the monetary and land aspects of the claim.... [T]he Tribes opened negotiation with the State concerning the question of

jurisdiction not because they wanted to do so but because they were obliged to do so to obtain a Settlement that they had already negotiated with the Federal Government.

(Transcript of March 28, 1980 Public Hearing before the Maine Joint Select Comm. on Indian Land Claims, Statement of attorney for the Southern Tribes, Thomas Tureen, *reprinted in* Me. Leg. Record (1980) at 23-24; *Penobscot Nation v. Stilphen*, 461 A.2d 478, 488 n.7 (Me. 1983)).

37. Counsel for the Southern Tribes further explained that, “[f]or the Indians [negotiating the settlement] meant, among other things, understanding the legitimate interests of the State in having basic laws such as those dealing with the environment apply uniformly throughout Maine.”

(Transcript of March 28, 1980 Public Hearing before the Maine Joint Select Comm. on Indian Land Claims, Statement of attorney for the Southern Tribes, Thomas Tureen, *reprinted in* Me. Leg. Record (1980) at 25).

38. Similarly, the State of Maine, through the Maine Attorney General, explained that MIA would avoid a situation where Maine’s water and air pollution control laws would be unenforceable within tribal areas. (Transcript of March 28, 1980 Public Hearing before the Maine Joint Select Comm. on Indian Land Claims, Statement of Maine Attorney General Richard S. Cohen, *reprinted in* Me. Leg. Record (1980) at 6-7).

39. Thus, as the First Circuit Court of Appeals determined, MIA (as ratified by MICSA) “provided that ‘with very limited exceptions,’ the southern tribes would be ‘subject to’ Maine law....” (*Maine v. Johnson*, 498 F.3d 37, 42 (1st Cir. 2007) (*quoting Akins v. Penobscot Nation*, 130 F.3d 482, 484 (1st Cir. 1997); *see also Passamaquoddy Tribe v. Maine*, 75 F.3d 784, 787 (1st Cir. 1996) (the 1980 Acts were designed to “create a unique relationship between state and tribal authority” by submitting the Maine Indians and their tribal lands and resources to the State’s jurisdiction and by giving the State “a measure of security against future federal incursions upon these hard-won gains.”)).

40. Under MIA, the Southern Tribes were to be treated like municipalities and subject to the laws and regulatory oversight of the State with the exception of things such as “internal tribal matters,” which have been determined not to encompass environmental regulation. (30 M.R.S. § 6206(1); *Akins v. Penobscot Nation*, 130 F.3d 482, 484 (1st Cir. 1997) (the Southern Tribes benefitted from the settlement by gaining municipal powers); *Maine v. Johnson*, 498 F.3d 37, 46, 47 (1st Cir. 2007) (“In our view, the Settlement Acts make ordinary Maine law apply, even if only tribal members and tribal lands are affected . . . *unless* the internal affairs exemption applies;” discharge of pollutants into Maine waters was not of the same character as “the structure of Indian government or distribution of tribal property;” concluding that the internal tribal matter exception did not apply to bar Maine’s environmental regulatory jurisdiction over Indian wastewater facilities); (Exhibit 1, Attachment A, pp. 8-11)).

41. Among the other very limited exceptions to the general application of Maine laws and regulations to the Southern Tribes is a provision involving certain regulatory restrictions on the taking of fish:

Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of [30 M.R.S. § 6207(6)].

(30 M.R.S. § 6207(4)).

42. In general, a combination of the Southern Tribes, the joint Maine Indian Tribal-State Commission (“MITSC” or the “commission”), and/or the Commissioner of Maine’s Department of Inland Fisheries and Wildlife (“IFW”) regulate fish catch and size limits and fishing seasons with respect to waters within or bounding on Maine’s Indian territory. (30 M.R.S. § 6207).

43. Section 6207(4) of MIA merely permits members of the Southern Tribes the limited

right to take fish within their respective reservations regardless of and free from the normally applicable IFW and/or MITSC restrictions on things such as the “method, manner, bag and size limits and season for fishing” provided that (*i.e.*, only if) the fish being taken is for the tribal member’s individual sustenance. (30 M.R.S. §§ 6207(3), (4)).

44. The use of the word “sustenance” in Section 6207(4) of MIA was intended as (and is) a limitation on the exemption from otherwise applicable IFW and/or MITSC fishing laws and regulations with respect to fishing catch and size limits and seasons only; the use of the word “sustenance” in Section 6207(4) does not provide for any kind of special or expanded tribal right to any particular quantity or quality of fish or heightened level of underlying water quality, or otherwise create a Southern Tribal-specific designated use of “sustenance fishing” for any Maine water bodies. (30 M.R.S. § 6207(4); *see also* 38 M.R.S. § 464(2-A)(F) (under Maine’s Water Classification System, “designated use” means the use specified in WQS for each waterbody or segment under Title 38, Sections 465 – 465-C, 467 – 470, and not under any part of MIA); *Menominee Indian Tribe of Wisconsin v. Thompson*, 922 F. Supp. 184, 215-16 (W.D. Wis. 1996)).

45. During Maine’s legislative hearings on MIA, there was testimony regarding whether the Southern Tribes’ limited right to “take fish” under Section 6207(4) was intended to apply to commercial as well as personal fishing, which testimony clarified that the phrase “for their individual sustenance” was used merely as a way to limit the exception from Maine and/or MITSC fishing laws and regulations to personal consumption only:

We didn’t just use the word sustenance, we used sustenance for the individual which we construe as not covering commercial fishing operations. We believe that means consumption by the individual.

(Transcript of March 28, 1980 Public Hearing before the Maine Joint Select Comm. on Indian Land Claims, Statement of John Paterson, *reprinted in* Me. Leg. Record (1980) at 165-66).

46. Nothing in the text or history of the 1980 Acts suggests that Section 6207(4) of MIA was intended to create any kind of special designated use of tribal “sustenance fishing” for the Southern Tribes (or any other Maine Indians), let alone entitle any Indian tribes to any kind of bootstrapped special status or rights with respect to water or fish quality, as this would have been contrary to one of the State’s primary goals with respect to the settlement and the 1980 Acts – the avoidance of a two-tiered system, or a “nation within a nation” in Maine. (*See* Hearings before the Senate Committee on Indian Affairs on S. 2829, 96th Cong. 2d Sess. 139 (1980) (Testimony of Maine Governor Joseph Brennan: “We could never have a nation within a nation in Maine. . . . So we have created a new model. . . . [O]ur Indian citizens [will] be on a substantially equal footing with their fellow citizens . . .”)).

***The jurisdictional effect of the
1980 Acts on the Northern Tribes***

47. Under MIA and MICA, and as recognized by the First Circuit Court of Appeals, there are no exceptions to Maine’s environmental regulatory jurisdiction for the Northern Tribes, and their tribal “lands and natural resources” are fully subject to Maine’s jurisdiction to the same extent as any other person or “lands and natural resources.” (30 M.R.S. § 6202 (the Maliseets and their lands “will be wholly subject to the laws of the State”); 30 M.R.S. § 7205 (the Micmacs have no municipality status or civil or criminal jurisdiction within their lands); 30 M.R.S. §§ 6204, 6206-A, 7203; *Aroostook Band of Micmacs v. Ryan*, 484 F.3d 41, 45-46 (1st Cir. 2007) (State Micmac Act gave the Micmacs a status similar to the Maliseets, which was different from that of the Southern Tribes)).

48. Thus, Maine’s Indian Settlement Acts afford the Northern Tribes significantly less than the Southern Tribes, as their lands and resources, including their tribal water and water rights and tribal hunting and fishing rights, are wholly subject to the laws of the State to the

same extent as any other person or lands or other natural resources therein. (30 M.R.S. 7203; 30 M.R.S. §§ 6202, 6204; *Aroostook Band of Micmacs v. Ryan*, 484 F.3d 41, 49-50 (1st Cir. 2007); *Houlton Band of Maliseet Indians v. Ryan*, 484 F.3d 73, 74-75 (1st Cir. 2007); (Exhibit 1, Attachment A, p. 8)).

EPA's contemporaneous view of tribal authority under the 1980 Acts

49. Shortly after the passage of the 1980 Acts, EPA prepared a report summarizing its understanding of the terms of the 1980 Acts for EPA's internal use ("EPA Report"), which EPA forwarded to Maine in March 1982. (EPA Report, which is attached hereto as Exhibit 2 (cover letter)).

50. The EPA Report does not acknowledge any separate or special tribal right to or authority over water quality for any purpose, but instead assumes Maine's full environmental regulatory authority over all Indian Waters, while limiting tribal and/or MITSC authority over the regulation of "fish and game laws" only – implicitly for things such as fish catch and size limits and fishing seasons, and not enhanced water quality. The EPA Report states in part:

The Maine Settlement Act establishes [Southern] tribal governments as municipalities, rather than federal reservations. They are "subject to the laws of the state and to the civil and criminal jurisdiction of the courts of the state" except for "internal tribal matters", minor crime, juvenile crime, small claims and domestic relations. . . .

Tribes will have jurisdiction over hunting and over fishing on ponds of less than 10 acres. Fishing in larger bodies of water and river reaches will be controlled by the Maine Indian Tribal Commission described below. At the same time, the Indians will register game like other hunters and take part in the game census conducted by the State. The State, in turn, may overrule Indian fish and game laws after notice and adjudicatory hearing if species are threatened. . . .

INDIAN AUTONOMY

. . . the state and federal acts declare [Southern tribal governments] to be

municipalities. . . the Maine Settlement Acts impose State law on the Indian territories, although minor crime, juvenile crime, small claims and domestic relations will be handled in tribal courts. . . .

STATE ENVIRONMENTAL LAWS

. . .state law on land use, land management, conservation and environmental protection will apply on Indian territory. “That the regulation of land or natural resources may diminish or restrict maximization of income or value is not considered a financial encumbrance and not barred from application under this Act.” according to the Section-by-Section Analysis of the Federal Act. . . .

OPERATION AND MAINTENANCE OF WATER AND SEWER FACILITIES

. . .

Maine DEP has two staffers assigned to make regular visits and to provide training, and hope to start receiving regular lab reports in the near future. . .

Although DEP has the same enforcement power against the reservations as against any other municipality, DEP is reluctant to incur tribal hostility by using it. . .

(Exhibit 2).

Maine’s role as a State under the CWA

51. The CWA has deep roots within the State of Maine, as Maine’s Senator Edmund Muskie was one of the CWA’s chief architects. Consistent with this legacy, Maine takes seriously its responsibility and commitment to uniformly protect Maine’s water quality on behalf of all citizens throughout the State of Maine, including members of Maine’s Indian tribes.

52. In 1972, Congress substantially amended the Federal Water Pollution Control Act, commonly known as the CWA, which aims to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” and seeks to attain “water quality which provides for the protection and propagation of fish, shellfish, and wildlife.” (33 U.S.C. § 1251(a)).

53. In establishing the CWA’s regulatory framework, Congress was careful to “recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and

eliminate pollution, [and] to plan the development and use . . . of land and water resources . . .” (33 U.S.C. § 1251(b)).

54. Congress provided, additionally, that nothing in the CWA “shall . . . be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.” (33 U.S.C. § 1370).

55. Under the CWA, States rather than EPA have the primary authority and responsibility to create, review and revise WQS for all intrastate waters. (33 U.S.C. §§ 1313(c)(1), (2); 40 C.F.R. §§ 131.3(i), 131.4; *PUD No. 1 of Jefferson Co. v. Washington Dep’t of Ecology*, 511 U.S. 700, 704 (1994); *Pronsolino v. Nastri*, 291 F.3d 1123, 1127 (9th Cir. 2002); *Natural Resources Defense Council, Inc. v. U.S. E.P.A.*, 16 F.3d 1395, 1400 (4th Cir. 1993); *Friends of Merrymeeting Bay v. Olsen*, 839 F.Supp.2d 366, 370 (D. Me. 2012)).

56. A State’s WQS both define the water quality goals of intrastate water bodies (or portions thereof) by designating the uses to be made of the waters, and set numeric water quality criteria to protect the State’s designated uses. (33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. §§ 130.3, 131.2, 131.3(i), 131.10, 131.11).

57. Prior to changing a WQS by either adding a new designated use or establishing any sub-category(ies) of use, a State (or EPA, as the case may be) must provide notice and opportunity for a public hearing. (33 U.S.C. §§ 1251(e), 1313(c)(4); 40 C.F.R. § 131.10(e); (EPA Water Quality Standards Handbook, § 6.1.2 (a copy of this and other relevant portions of EPA’s WQS Handbook (chapters 3 and 6) are attached hereto as Exhibit 3)).

58. Upon adopting or revising WQS, a State must submit its WQS to EPA for review, and EPA then has the non-discretionary duty either to approve the new or revised WQS within 60 days of their submission if they meet the requirements of the CWA, or disapprove the WQS

within 90 days of their submission. (33 U.S.C. § 1313(c)(2) & (3); 40 C.F.R. §§ 131.5 & 131.21).

59. If a State's new or revised WQS are disapproved or determined by EPA not to meet the requirements of the CWA in any way, then EPA has the non-discretionary duty to notify the State of the deficiencies in the WQS and specify the changes required for EPA approval within 90 days of the State's submission of those WQS. (33 U.S.C. § 1313(c)(3); 40 C.F.R. § 131.21).

60. In addition to promulgating WQS such as designated uses of intrastate waterbodies and water quality criteria to protect those uses, States may also apply to EPA for authorization to regulate point sources of pollution by prohibiting unpermitted discharges of pollutants into waters of the United States under the National Pollution Discharge Elimination System ("NPDES"). (33 U.S.C. §§ 1311(a) & 1342; *Maine v. Johnson*, 498 F.3d 37, 39-40 (1st Cir. 2007)).

61. In November 1999, Maine applied for such NPDES permitting authority and submitted its Maine Pollution Discharge Elimination System ("MEPDES") program to EPA for approval for all Maine waters, including Indian Waters. (33 U.S.C. § 1342(b); *Maine v. Johnson*, 498 F.3d 37, 40 (1st Cir. 2007)).

***Under the 1980 Acts, the 1987 tribal amendments
to the CWA do not apply in Maine***

62. In 1987, Congress amended the CWA by, among other things, adding Section 518, which for the first time set forth Indian tribal rights and responsibilities under the CWA and allowed Indian tribes outside of Maine to prospectively apply for "treatment as state" status under the CWA. (33 U.S.C. § 1377(e)).

63. Generally, as a result of the 1987 amendments to the CWA, a qualifying Indian tribe outside of Maine may now be granted jurisdiction to regulate water resources within its

borders in the same manner as states, including the authority to establish tribal WQS subject to EPA review and approval and to issue NPDES permits for discharges into such waters.

(33 U.S.C. § 1377(e); 40 C.F.R. § 131.8; *City of Albuquerque v. Browner*, 97 F.3d 415, 418 (9th Cir. 1996)).

64. Under MICSA, however, the 1987 addition of Section 518 to the CWA does not apply in Maine and affords Maine's Indian tribes no separate status or rights because it would affect Maine's regulatory jurisdiction and because it was not made explicitly applicable to Maine.

(25 U.S.C. §§ 1725(h), 1735(b); *Maine v. Johnson*, 498 F.3d 37, 43 n.5 (1st Cir. 2007)).

65. Congress considered this very issue when enacting Section 518 of the CWA:

This section does not override the provisions of the Maine Indian Claims Settlement Act (25 U.S.C. 1725). Consistent with subsection (h) of the Settlement Act, the tribes addressed by the Settlement Act are not eligible to be treated as States for regulatory purposes . . .

(Water Quality Act of 1987, Section-by-Section Analysis, *reprinted in* 1987 U.S.C.C.A.N. 5, at 43; *see also Maine v. Johnson*, 498 F.3d 37, 43 n.5 (1st Cir. 2007)).

66. EPA itself also addressed this issue at length in a 1993 guidance document from the Chief of its General Law Office:

The critical jurisdictional section of the Federal [Settlement] Act is § 1725, which ratifies the State Act, limits the application of federal Indian law in Maine if it would affect State law, and bars the application of future federal Indian law in Maine unless the federal legislation specifically notes its applicability in Maine. . . .

Subsection 1725(h) is a critical provision of the Federal [Settlement] Act that explicitly and completely prohibits the application to the [Maine Indian tribes] of any federal law that (1) gives special status to the [Maine Indian tribes] and (2) "affects or preempts" Maine's civil, criminal, or regulatory jurisdiction. 25 U.S.C. § 1725(h). This provision specifically includes state environmental law and land use law. . . . This subsection would seem to invalidate federal laws that might give the [Maine Indian tribes] special status, including treatment as a state, for certain environmental programs or

purposes if it would “affect or preempt” the State’s authority, including the State’s jurisdiction over environmental and land use matters.

The final critical provision of the 1980 Federal Act for jurisdictional analysis relates to future legislation. Future federal legislation for the benefit of Indians that “would affect or preempt” state laws (including the State Act) would not apply in Maine unless the federal legislation specifically addressed its application in Maine . . . Thus, any post-1980 special federal legislative provisions that might give Indians special jurisdictional authority (if, for example, any federal laws in the 1980’s provided authority for EPA approval of a Tribal environmental program equivalent to a state environmental program delegated by EPA to the state) could not provide the [Maine Indian tribes] with such jurisdictional authority unless the federal legislation specifically addressed Maine and made the legislation applicable within Maine.

(EPA Memorandum: Penobscot’s Treatment as a State under CWA § 518(e) for Purposes of Receiving CWA § 106 Grant, at 7-8 (July 20, 1993) (emphasis in original) (a copy of this 1993 EPA Memorandum is attached hereto as Exhibit 4)).

67. To date, and as far as Maine is aware, no Maine Indian tribe has been authorized by EPA to issue NPDES permits, promulgate WQS, or administer a WQS program in Maine pursuant to 33 U.S.C. § 1377(e) and/or 40 C.F.R. § 131.8, as such an EPA authorization would violate the 1980 Acts and be inconsistent with *Maine v. Johnson*, 498 F.3d 37, 43 n.5 (1st Cir. 2007).

***Maine’s longstanding and EPA-approved
Water Classification Program***

68. Maine’s designated uses of its intrastate waterbodies are set forth in Maine’s Water Classification Program, which was enacted in its current form in 1986 to strengthen Maine’s WQS. (P.L. 1985, c. 698, §15 (eff. July 16, 1986), now as amended 38 M.R.S. §§ 464 *et seq.*; 38 M.R.S. § 464(1) (“The Legislature intends by passage of this article [Title 38, c. 3, sub. 1, art. 4-A] to establish a water quality classification system. . . based on water quality standards which designate the uses and related characteristics of those uses for each class of water. . . The Legislature further intends by passage of this article to assign to each of the State’s surface water

bodies the water quality classification which shall designate the minimum level of quality. . . intended to direct the State's management of that water body. . ."); 38 M.R.S. § 464(2-A)(F) (under Maine's Water Classification Program, "designated use" means the use specified in WQS for each waterbody or segment under Title 38, Sections 465-465-C and 467-470, and not under any part of MIA)).

69. Since 1986, the designated uses and other WQS set forth in Maine's Water Classification Program have applied statewide to all of Maine's surface waterbodies, including all portions of Maine's major river basins and minor drainages and Maine's Indian Waters, and have not provided any special status, rights or protections with respect to (or have even mentioned) Maine's Indian tribes or tribal sustenance fishing. (P.L. 1985, c. 698, §15 (eff. July 16, 1986); 38 M.R.S. §§ 464-470).

70. Since 1986, the designated uses set forth in Maine's Water Classification Program have included uses such as "fishing" and "recreation in or on the water," which are goals that are generally required by the CWA. (38 M.R.S. §§ 465, 465-A, 465-B; P.L. 1985, c. 698, §15 (eff. July 16, 1986); 33 U.S.C. § 1251(a)(2); EPA's Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000), EPA-822-B-00-004 (October 2000) (EPA's "2000 Guidance," portions of which are attached hereto as Exhibit 5), § 4.1.1.2 (State standards for human health are set to protect CWA Section 101(a) "fishable" and "swimmable" uses)).

71. Historically, EPA communicated extensively with Maine regarding Maine's development and enactment of its Water Classification Program, including EPA's communications set forth in EPA letters to Maine dated February 20, 1985; November 12, 1985; July 16, 1986; August 20, 1986; April 24, 1987; May 21, 1987; August 31, 1987; November 3, 1988; May 11, 1989;

December 20, 1990; and June 28, 1999. (Copies of these letters are collectively attached hereto as Exhibit 6).

72. As of December 20, 1990, EPA had determined that Maine's Water Classification Program (including all of Maine's designated uses) as well as Maine's numeric water quality criteria were in compliance with the CWA and corresponding federal regulations, and EPA had not: 1) limited EPA's approval of Maine's Water Classification Program, designated uses, or water quality criteria to non-Indian Waters only; 2) recognized (or even mentioned) any kind of designated use for sustenance fishing for any Maine waterbody; or 3) raised any other question regarding the application of Maine's Water Classification Program in Indian Waters. (Exhibit 6).

73. In June 1999, Maine submitted what was then a "complete and current" set of WQS to EPA for inclusion in EPA's CWA WQS docket for Maine, and Maine's submission did not include or identify 30 M.R.S. § 6207(4) or any other portion of MIA as a WQS. In its response dated June 28, 1999, EPA raised no objection or concern regarding the absence of any portion of MIA or of Section 6207(4) in particular, which EPA now contends (as of its February 2, 2015 letter) constitutes a WQS – an alleged designated use of tribal "sustenance fishing" for the Southern Tribes' Indian Waters. (Exhibit 6).

74. The Maine Legislature has sole authority to make changes in the designated uses of the waters of the State of Maine, and has never enacted a designated use (for WQS purposes) of sustenance or subsistence fishing for any Maine surface waterbody. (38 M.R.S. § 464(2-A)(E)).

75. In 2002, the Maine Legislature considered but rejected a controversial proposal to create a designated use of "subsistence" fishing within Maine's Water Classification Program (at 38 M.R.S. §§ 466(10-A) & 467(7)(A)), which was proposed following a DEP review of Maine's Water Classification Program that resulted in suggested changes to Maine's WQS. (A copy of

DEP's recommendations, the proposed bill (L.D. 1529) and amendment, and related materials is attached hereto as Exhibit 7).

76. The rejected portion of the 2002 bill (L.D. 1529) would have created a new designated use of "subsistence" fishing for select portions of the Penobscot River only, and was not intended to affect or change the 1980 Acts in any way, but was instead designed to recognize for the first time, as a matter of State environmental policy and within Maine's Water Classification Program, a new and more specific kind of "fishing" designated use for a subset of Maine's general population that purportedly engaged in higher-than-average rates of fish consumption. (Exhibit 7).

77. L.D. 1529, however, was ultimately amended to remove any reference to the controversial proposal for a new designated use of subsistence fishing. The amendment also authorized further consideration of a new designated use of subsistence fishing in the next legislative session. (Exhibit 7, Summary of Committee Amendment A to L.D. 1529). As far as Maine is aware, no further action was taken regarding the proposal for a new designated use of subsistence fishing.

States such as Maine have flexibility when establishing numeric water quality criteria to protect those designated uses and populations that the State chooses to protect

78. States have the primary authority to determine the appropriate numeric water quality criteria levels to protect their designated uses and the human health of the populations that they have chosen to protect, and may make their own judgments, within reasonable scientific bounds, on factors such as cancer potency or systemic toxicity, exposure, and risk characterization. (Exhibit 3, § 3.1.1 ("EPA's water quality criteria documents are available to assist States in . . . adopting [WQS] that include appropriate numeric water quality criteria . . . in these situations,

States have primary authority to determine the appropriate level to protect human health . . .”); *see also* 40 C.F.R. § 131.11(b); 33 U.S.C. § 1251(b)).

79. In establishing numeric water quality criteria to protect their designated uses, States may adopt numeric water quality values based on published EPA guidance. (40 C.F.R. § 131.11(b)(1)(i) (“In establishing criteria, States should . . . [e]stablish numerical values based on . . . 304(a) Guidance. . .”); 40 C.F.R. § 131.3(c) (Section 304(a) criteria are developed by EPA based on the latest scientific information and are issued to the States for use in developing criteria); 33 U.S.C. § 1314 (EPA information and guidelines on criteria); Exhibit 3, Chapter 3 introduction (States may use EPA’s published water quality criteria “as the basis for developing enforceable water quality standards”) & §§ 3.1.1, 3.4.1 (“Under EPA’s regulation, in addition to basing numeric criteria on EPA’s section 304(a) criteria documents, States may also base numeric criteria on site-specific determinations or other scientifically defensible methods,” & State Option 1)).

80. In 2000, EPA released its Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (“2000 Guidance”), which updated EPA’s methodology for deriving human health criteria and its prior criteria recommendations (published in 1980), and which was intended to provide States with flexibility when establishing WQS by providing scientifically valid WQS options that States could use as default human health criteria for various populations such as the general population. (Exhibit 5, §§ 1.2, 1.3; Exhibit 1, Attachment A, p. 34 & n. 25).

81. Multiple factors are considered together when developing human health criteria, including factors such as an individual fish consumption rate (“FCR,” measured in the amount of fish and shell fish consumed per day) and lifetime excess cancer risk level (“Risk Level,” which

represents a carcinogenic dose associated with a chosen target risk measured in number of people, such as EPA's accepted risk range of 10^{-4} (10,000 people) and 10^{-6} (1,000,000 people)). (Exhibit 5, §§ 1.6, 2.4 ("EPA believes that both 10^{-6} and 10^{-5} may be acceptable for the general population and that highly exposed populations should not exceed a 10^{-4} risk level."); Exhibit 3, § 3.4.1 ("EPA generally regulates pollutants treated as carcinogens in the range of 10^{-6} and 10^{-4} to protect average exposed individuals and more highly exposed populations."); 06-096 C.M.R. ch. 584, §§ 4 (Risk levels), 5 (Human health assumptions) (eff. July 29, 2012)).

82. A State's chosen FCR works with and is relative to the State's selected cancer Risk Level, which is a parameter that represents what the State considers to be an appropriate level of cancer risk. Differences in Risk Levels will in turn affect the levels of FCRs that will protect human health to the State's chosen level of individual cancer risk, which EPA explains as follows:

the incremental cancer risk levels are *relative*, meaning that any given criterion associated with a particular cancer risk level is also associated with specific exposure parameter assumptions (i.e., intake rates, body weights). When these exposure values change, so does the relative risk. For a criterion derived on the basis of a cancer risk level of 10^{-6} , individuals consuming up to 10 times the assumed fish intake rate would not exceed a 10^{-5} risk level. Similarly, individuals consuming up to 100 times the assumed rate would not exceed a 10^{-4} risk level. Thus, for a criterion based on EPA's default intake rate (17.5 gm/day) and a risk level of 10^{-6} , those consuming a pound per day (i.e., 454 grams/day) would potentially experience between a 10^{-5} and a 10^{-4} risk level). (Note: Fish consumers of up to 1,750 gm/day would not exceed the 10^{-4} risk level).

(Exhibit 5, § 2.4 (emphasis in original)).

83. EPA's 2000 Guidance permits the use of cancer Risk Levels that are lower than Maine's conservative Risk Level of 10^{-6} , and recognizes that such lower Risk Levels (10^{-5} and 10^{-4}) are and have been properly used by States and Indian tribes:

EPA believes that both 10^{-6} or 10^{-5} may be acceptable for the general population and that highly exposed populations should not exceed a 10^{-4} risk level. States or Tribes that have adopted standards based on criteria at the 10^{-5} risk level can continue to do so, if the highly exposed groups would at least be protected to the 10^{-4} level. . . .

Adoption of a 10^{-6} or 10^{-5} risk level, both of which States and authorized Tribes have chosen in adopting water quality standards to date, represents a general acceptable risk management decision, and EPA intends to continue to provide this flexibility to States and Tribes. . .

(Exhibit 5, § 2.4; Exhibit 1, Attachment A, p. 36 (discussing EPA's approved range of Risk Levels)).

84. EPA issued additional guidance in November 2000 entitled Guidance for Assessing Chemical Contaminant Data for Use in Fish Advisories, Volume 2: Risk Assessment and Fish Consumption Limits, Third Edition, EPA 823-B-00-008 (November 2000) ("2000 Fish Consumption Guidance," portions of which are attached hereto as Exhibit 8), which "presents consumption limits that were calculated using a risk level of 1 in 100,000 (10^{-5})" but notes that "states may choose to calculate consumption limits based on other risk levels." (Exhibit 8, § 1.2 (Objectives)).

85. EPA's 2000 Fish Consumption Guidance also recommends default FCRs of 17.5 grams/day for recreational fishers and 142.4 grams/day for subsistence fishers using a cancer Risk Level of 10^{-5} , which EPA believes is "especially protective of recreational fishers and subsistence fishers within the general U.S. population," and which equates to a FCR of 14.24 grams/day when coupled with a Risk Level (like Maine's) of 10^{-6} . (Exhibit 8, § 1.3; *see also id.* at § 1.5 (noting that the guidance assumed an acceptable risk of 1 in 100,000 (10^{-5}) in meal consumption limits, as opposed to the July 1997 second edition, which "used an acceptable risk of 1 in 10,000, 1 in 100,000, and 1 in 100,000" (*i.e.*, 1 in 10^{-4} , 10^{-5} , and 10^{-6})).

86. EPA's 2000 Guidance affords States the flexibility to select the particular population that the State wishes to protect, and to either use EPA's default national recommendations for factors such as the FCR, or to make alternative exposure estimates for subpopulations based on more localized data – something which EPA encourages but does not (and may not) require. (Exhibit

5, § 2.1 (“An important decision . . . is the choice of the particular population to protect. For instance, criteria could be set to protect those individuals who have average or “typical” exposures . . . EPA has selected default parameter values that are representative of several defined populations . . . EPA believes that its assumptions afford an overall level of protection targeted at the high end of the general population . . . EPA also believes that this is reasonably conservative and appropriate to meet the goals of the CWA . . .”); § 4.2.2.3 (States have “the flexibility to choose alternative intake rate . . . assumptions to protect specific population groups that they have chosen.”); § 4.2.4 (States are “encouraged to consider protecting population groups that they determine are at greater risk . . . The ultimate choice of . . . exposure intake rates requires the use of professional judgment”); § 4.3 (“In providing additional exposure intake values for highly exposed subpopulations (e.g., sport angler, subsistence fishers), EPA is providing flexibility for States and authorized Tribes to establish criteria specifically targeted to provide additional protection using adjusted values for exposure parameters for . . . fish consumption.”); 4.3.3.1 (“If a State or authorized Tribe has not identified a separate well-defined population of high-end consumers and believes that the national data . . . are representative, they may choose these recommended rates. . . . Once again, EPA emphasizes the flexibility for States and authorized Tribes to use alternative assumptions based on local or regional data to better represent their population groups of concern.”); *see also* 65 Fed. Reg. 66444-01, 66449, §C (November 3, 2000) (“For the purpose of deriving criteria based on the 2000 Human Health Methodology, EPA is publishing default values for risk level, fish intake. . . We believe these default values result in water quality criteria protective of the general population, and we will use these values when deriving 304(a) criteria. States and authorized Tribes may use other values more representative of local conditions . . .”); *but see* Exhibit 1, Attachment A, p. 35).

87. EPA's recommended criteria for potentially exposed subpopulations are non-binding options that are available should a State opt not to use EPA's recommended criteria for the general population or some other scientifically defensible criteria:

States and authorized Tribes have the option to develop their own criteria and the flexibility to base those criteria on population groups that they determine to be at potentially greater risk because of higher exposures, yet, EPA cannot oblige the States to specific consulting agreements because, again, criteria are guidance, not enforceable regulations, and do not impose legally binding requirements. Therefore, we recommend that States and Tribes give priority to identifying and adequately protecting their most highly exposed population by adopting more stringent criteria, *if the State or Tribe determines that the highly exposed populations would not be adequately protected by criteria based on the general population*. In all cases, States and authorized Tribes have the flexibility to use local or regional data that they believe to be more indicative of the population's fish consumption—instead of EPA's default rates—and we strongly encourage the use of these data.

65 Fed. Reg. 66444, 66468 (November 3, 2000) (emphasis added); *see also id.* at 66454 (EPA recommended criteria serve as guidance to States, and “EPA cannot force States or Tribes to conduct their own evaluations.”).

88. For purposes of Maine's human health numeric water quality criteria, Maine utilizes a general FCR of 32.4 grams/day coupled with a Risk Level of 10^{-6} for all pollutants other than inorganic arsenic, and a FCR of 138 grams/day coupled with a Risk Level of 10^{-4} for inorganic arsenic. (Exhibit 1, Attachment A, p. 37 & n. 31; EPA's January 25, 2013 comparison of State and tribal FCRs, a copy of which is attached hereto as Exhibit 9; 06-096 C.M.R. ch. 584, §§ 4 (Risk levels), 5 (Human health assumptions) (eff. July 29, 2012)).

89. Thus, Maine's use of a general 32.4 grams/day FCR coupled with a cancer Risk Level of 10^{-6} is the equivalent of a FCR of 324 grams/day coupled with a Risk Level of 10^{-5} , or a FCR of 3240 grams/day coupled with a Risk Level of 10^{-4} – both FCRs that greatly exceed any EPA default FCR recommendations for any subpopulations, including subsistence fishers, within EPA-accepted Risk Levels. (Exhibit 5, § 2.4).

90. As reflected by EPA's January 2013 comparison of FCRs, Maine's FCR of 32.4 grams/day coupled with a cancer risk level of 10^{-6} represents one of the highest and most protective FCRs of all of the 50 States, and exceeds any EPA guidance on recommended FCRs for the general population. (Exhibit 9).

91. In contrast to Maine's general FCR of 32.4 grams/day, EPA's 2000 Guidance, which is currently in effect, utilizes a FCR of 17.5 grams/day for the general population, which, according to EPA represents the 90th percentile of EPA's data, is protective of the majority of the general population, and is recommended by EPA for State use as a FCR for the general population. (Exhibit 5, §§ 4.2.2.3, 4.3.3.1; Exhibit 1, Attachment A, p. 34 & n.25).

92. EPA's prior 1980 human health guidance for the general population assumed a default FCR of 6.5 grams/day, which was EPA's estimated national per capita FCR for freshwater and estuarine fish. As EPA acknowledges, many States utilize this 1980 EPA-recommended FCR of 6.5 grams/day in the development of their human health criteria, while other States such as Maine utilize a higher and more protective FCR. (Exhibit 3, § 3.1.3 ("Many States use EPA's 6.5 g/day consumption value. . ."); Exhibit 9).

Prior to 2004, EPA had already approved Maine's WQS for Indian Waters and had acted as if those WQS were fully in effect for Maine's Indian Waters

93. Historically, both before and after passage of the 1980 Acts, and throughout the 1980s and 1990s, EPA reviewed, acted on, and fully approved Maine's WQS for Indian Waters without any qualification as to the effect of those WQS within Maine's Indian Waters. (Exhibit 6).

94. Historically, EPA, including the highest members of EPA's Region 1, also acted as if Maine's WQS were in effect for Maine's Indian Waters for various CWA purposes. (Exhibit 1, Attachment A, p. 15; *but see id.* (asserting that mid-level EPA officials mistakenly assumed, without expressly considering the issue, that Maine's WQS applied within Indian Waters)).

95. For instance, in a letter dated May 31, 1996, EPA's then Regional Administrator for Region 1, John DeVillars, declined a request to EPA by PIN to begin a process of establishing federally promulgated WQS for the Penobscot River, including "waters affecting the Penobscot Indian Nation's reservation," and instead stated that he believed "the most promising approach to achieving our mutual objective is through thoughtfully applying the current [Maine] standards." The EPA Regional Administrator's letter goes on to discuss implementation of Maine's dioxin criterion ("based on EPA's national criterion") within waters "adjacent to" PIN's reservation, and states that EPA Region 1 believes that the "most efficient and effective way to address the tribe's concern at this time is through the permit process [based on Maine's WQS], rather than through a separate federal promulgation of a dioxin criterion." (A copy of this letter is attached hereto as Exhibit 10).

96. In 1997, EPA also responded to comments in connection with a proposed EPA NPDES permit for discharges by Lincoln Pulp and Paper within Indian Waters on the Penobscot River. (A copy of EPA's response to comments on Lincoln Pulp and Paper's proposed NPDES permit, along with portions of a draft fact sheet for the same NPDES permit, is attached hereto as Exhibit 11). In its responses, EPA applied Maine's WQS (including Maine's dioxin criterion) within Indian Waters, and determined that the EPA NPDES permit protected a FCR of 110 grams/day to a Risk Level of 10^{-5} [the equivalent of a FCR of 11.0 grams/day to a Risk Level of 10^{-6}], which EPA described as a "reasonable level of risk." (Exhibit 11, Response to Comments, p. 18; *see also id.*, draft fact sheet, p. 11 ("EPA seeks to apply the criterion for dioxin that Maine has adopted so as to ensure protection of human health, including the health of members of the Penobscot Nation who consume relatively large quantities of fish from this river."), p. 12 (EPA's NPDES permit protects both members of PIN and the general population; EPA has "left it to the

states to select a risk level from within an acceptable range” for human health, and has approved state human health criteria “based on risk levels ranging from 10^{-4} to 10^{-6} ”, pp. 12-13 (for NPDES permit purposes, treating Maine tribes such as PIN as a “highly exposed subpopulation” of Maine’s general population, and not as a separate “target population” protected by any kind of tribal-specific designated use of “sustenance fishing”).

97. In addition, when EPA issues such a NPDES discharge permit, a State water quality certification that the discharge complies with the State’s WQS and State law requirements is required pursuant to Section 401 of the CWA, 33 U.S.C. § 1341. (*PUD No. 1 of Jefferson Co. v. Washington Dep’t of Ecology*, 511 U.S. 700, 707-708 (1994); (Exhibit 1, Attachment A, p. 15)). Historically, Maine has issued Section 401 water quality certifications for EPA-issued NPDES permits throughout Maine, including permits for discharges in Indian Waters, and EPA has never suggested that Maine’s Section 401 certifications were unnecessary or that Maine’s WQS were not applicable within those Indian Waters. (Exhibit 1, Attachment A, p. 15 (acknowledging EPA Region 1’s historical requests for State Section 401 certifications that discharges within Indian Waters complied with Maine’s WQS, but dismissing those requests as mid-level EPA mistakes).

98. In addition, EPA, in its oversight role over its CWA-delegated authority to Maine under the Maine Pollutant Discharge Elimination System (“MEPDES”), has historically reviewed draft MEPDES permits issued by Maine for discharges within Indian Waters.

99. EPA has never taken the position that any WQS other than Maine’s generally-applicable WQS govern its NPDES permits, or Maine’s MEPDES permits, for Indian Waters.

100. In fact, by letter dated June 10, 1998, EPA wrote DEP stating that, despite the “great strides in protection of water quality and human health Maine has taken,” EPA believed that portions of the Penobscot River within Indian Waters immediately below Lincoln Pulp and Paper

still failed to meet Maine's stringent WQS applicable to those Indian Waters, which needed "to remain on [Maine's] 1998 §303(d) list." (33 U.S.C. § 1313(d) (requiring States to identify a list of those intrastate waters not attaining applicable State WQS); a copy of EPA's June 10, 1998 letter is attached hereto as Exhibit 25).

101. In addition, on January 26, 2006, EPA, through the Director of EPA Region 1's Office of Ecosystems Protection, renewed NPDES permit No. ME 0101311 issued to PIN for discharges into the Penobscot River from PIN's wastewater facility in Indian Island, Maine, which permit was governed by Maine's WQS and superseded prior EPA-issued NPDES permits stretching back to 1985 and 1990, which were also governed by Maine's WQS. (A copy of this EPA-issued renewal of PIN's NPDES permit in Indian Waters is attached hereto as Exhibit 12).

102. EPA's January 2006 renewal of PIN's NPDES permit clearly applies Maine's WQS to Indian Waters and documents EPA's historical acceptance and application of Maine's WQS within Indian Waters for things such as prior NPDES permits, Penobscot River modeling, and non-attainment findings with respect to Maine's WQS:

B. NARRATIVE EFFLUENT LIMITATIONS

...

5. The discharge shall not cause a violation of state water quality standards (Maine Law, 38 M.R.S.A. 467(15)(1)(4) which classifies the Penobscot River as a Class B waterway in the proximity of the discharge.

...

FACT SHEET

...

RECEIVING WATER: Penobscot River

CLASSIFICATION: Class B

...

1. APPLICATION SUMMARY

- a. Application: The applicant applied for renewal of its Clean Water Act permit on May 8, 1990. The application reflects the discharge of 0.10 MGD of secondary treated municipal wastewater from the Penobscot Indian Nation's publicly owned treatment works facility to the Penobscot River, Class B, in Indian Island.
- b. History: The most recent relevant licensing/permitting actions include the following:

November 21, 1985 – The U.S. Environmental Protection Agency (EPA) reissued NPDES permit No.ME0101311 authorizing 0.07 MGD of treated municipal wastewater discharge from its wastewater treatment facility to the Penobscot River.

1990 – Maine DEP upgraded section of Penobscot River (previously classified as Class C)

May 8, 1990 – The U.S. Environmental Protection Agency (EPA) received a complete application from the Penobscot Indian Nation.

March 30, 2000 – The Maine Department of Environmental Protection (DEP) issued Waste Discharge License WDL#W002672-59-B-R authorizing 0.07 MGD (based on a monthly average) of treated municipal wastewater discharge from its wastewater treatment facility to the Penobscot River.

October 31, 2003 – EPA approved Maine to implement the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit program in the territories of two Maine Indian tribes, the Penobscot Indian Nation and Passamaquoddy Tribe. However, EPA did not [at that time] authorize the state to regulate two tribally owned and operated sewage treatment facilities: the Penobscot Indian Nations' Water Pollution Control Facility on Indian Island and the Passamaquoddy Tribe's Pleasant Point Facility.

...

2. RECEIVING WATER QUALITY CONDITIONS

The Penobscot River is classified as a class B waterway in the proximity of the discharge. Refer to state water quality standards (Maine Law, 38 M.R.S.A. § 467(15)(1)(4)). Class B waters require that a minimum dissolved oxygen level of 7 ppm and 75% of saturation be maintained at all times. A Penobscot River Modeling Report (April 2003) recommended that all municipal wastewater discharges should be capped at current phosphorus input levels. . . . This study of the Penobscot River from Millinocket to Bucksport (103 miles) began in the summer of 1997 involving the DEP and a number of stakeholders such as the Penobscot Nation, Great Northern Paper, International Paper, USEPA, and the Lincoln Sanitary District. A second round of monitoring was conducted in the summer of 2001. . . .

Non-attainment of class B dissolved oxygen criteria was observed at one location in 1997, but at ten of fourteen (10/14) locations sampled in 2001. . .

...

3. EFFLUENT LIMITATIONS & MONITORING REQUIREMENTS

...

Limits for pH are consistent with Maine Water Quality Standards for the adjacent receiving waters. (Class B).

Limits on e. coli bacteria are consistent with Maine Water Quality Standards for the adjacent receiving waters (Class B). . .

4. ENDANGERED SPECIES ACT ASSESSMENT

...

Receiving Water

The secondary treated wastewaters are discharged to the Penobscot River – Maine Class B upstream of the Veazie Dam and downstream of the confluence of the Stillwater River.

...

6. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

As permitted, the EPA has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the water body to meet standards for Class B classification.

- Discuss any recent plant improvements to improve water quality impacts
- Discuss WQ assessment results

...

(Exhibit 12). As EPA's own permit reflects, EPA has historically not recognized or applied any designated use of tribal "sustenance fishing" for Indian Waters in the Penobscot River, but has instead recognized and applied Maine's designated uses set forth in its established Water Classification Program. (*Id.*).

103. Maine's EPA-delegated authority to issue MEPDES permits for PIN's facility on Indian Island, as well as for the Passamaquoddy Tribe's Pleasant Point Facility, was subsequently confirmed by the First Circuit Court of Appeals in *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007).

***EPA's disapproval of Maine's 1999 application for NPDES
permitting authority for tribal facilities, and the Maine v. Johnson decision***

104. In January 2001, EPA approved Maine's 1999 application for its MEPDES permitting program for non-Indian Waters only and EPA took no "final action on the issues related to the State's jurisdiction and the applicability of State law in Indian country for the purposes of implementing the NPDES program in those areas." (*Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007); 66 Fed. Reg. 12791, 12,795 (February 28, 2001)).

105. Thereafter, in October 2003, EPA approved Maine's MEPDES permitting program for all non-Indian facilities discharging into Maine's Indian Waters, but not for two Indian wastewater facilities operated by the Southern Tribes that discharged into Indian Waters under the EPA theory that the operation of those two facilities constituted "internal tribal matters" not subject to Maine's regulation under the 1980 Acts. (*Maine v. Johnson*, 498 F.3d 37, 40 (1st Cir. 2007); 68 Fed. Reg. 65052, 65053 (November 18, 2003)).

106. In the course of reaching this October 2003 decision, EPA acknowledged that the 1980 Acts prevent "the general body of Indian law from unintentionally affecting or displacing MICSA's grant of jurisdiction to the state," 68 Fed. Reg. 65052, 65057 (November 18, 2003), and rejected arguments that the Southern Tribes had concurrent environmental regulatory jurisdiction with Maine over Maine's Indian Waters. (*Id.* at 65058-65059).

107. In any event, Maine appealed and ultimately prevailed on its challenge to EPA's refusal to fully approve Maine's MEPDES permitting program for Indian Waters in *Maine v. Johnson*, which confirmed Maine's statewide environmental regulatory authority as well as Maine's authority to issue MEPDES permits for all facilities discharging into Indian Waters, including Indian facilities. (*Maine v. Johnson*, 498 F.3d 37, 42, 45-46 (1st Cir. 2007)).

108. Based on the history and text of the 1980 Acts, the First Circuit Court of Appeals interpreted the “internal tribal matters” exception in the 1980 Acts (*see* 30 M.R.S. § 6206(1)) narrowly so that it “does not displace general Maine law on most substantive subjects, including environmental regulation,” and held that regulation of the discharge of pollutants into Maine’s Indian Waters was not an internal tribal matter because it is “not of the same character as tribal elections, tribal membership or other exemplars that relate to the structure of Indian government or the distribution of tribal property.” (*Maine v. Johnson*, 498 F.3d 37, 46 (1st Cir. 2007); *see also id.* at 45 (if the internal affairs exemption negated Maine’s ability to environmentally regulate within tribal waters, it would be “hard to see what would be left of the compromise restoration of Maine’s jurisdiction” set forth in the 1980 Acts)).

109. Following the decision in *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007), Maine’s DEP wrote EPA in mid-2008 stating:

I hereby request that U.S.E.P.A. amend its January 2001 delegation decision to make it consistent with the *Maine v. Johnson* decision. We expect that this amendment will include acknowledgement both of D.E.P.’s jurisdiction over all dischargers within the State, and that Maine’s water quality standards apply uniformly throughout the State. . . .

As you are aware, we are in the midst of relicensing all dischargers on the Penobscot River. . .

As we have discussed with both you and George Frantz, the State is in very close communications with the Penobscot Indian Nation in regards to pending licenses. . .

(A copy of this letter is attached hereto as Exhibit 13).

110. EPA delayed responding to the order on remand in *Maine v. Johnson*, 498 F.3d 37, 49 (1st Cir. 2007) for over four years, and did not take action to fully approve Maine’s delegated NPDES permitting authority over the two remaining Indian wastewater facilities until March 28, 2012.

That EPA Region 1 March 28, 2012 action states in part:

On December 17, 1999, EPA determined that the State of Maine had submitted a complete application to administer the NPDES permitting program in the state under the Clean Water Act. . .

On January 12, 2001, EPA approved the State of Maine's application to administer the NPDES program for all areas of the state other than Indian country. . .

On October 31, 2003, EPA approved the State of Maine's application to administer the NPDES program in the Indian territories of the Penobscot Indian Nation and the Passamaquoddy Tribe, with the exception of any discharges that qualified as "internal tribal matters" under MICSA and MIA. . . .

On August 8, 2007, the U.S. Court of Appeals for the First Circuit issued its opinion in *Maine v. Johnson*, 498 F.3d 37. . . . The court's mandate was issued on October 2, 2007. . . .

EPA proposed to implement the court's order by modifying its approval of Maine's NPDES program to authorize the State to issue NPDES permits for all discharges within the Indian territories of the Penobscot Nation and Passamaquoddy Tribe. . . . As a result, the state will assume responsibility from EPA for issuing and administering the permits for the Penobscot Nation Indian Island treatment works (EPA NPDES Permit No. ME 0101311 and MEPDES License No. 2672) and the Passamaquoddy Tribal Council treatment works (EPA NPDES Permit No. ME 0101311 and MEPDES License No. 2672). Neither tribe has applied to EPA to implement the NPDES permit program, so this action does not address the question of either tribe's authority to implement the program.

(77 Fed. Reg. 23481, 23482 (April 19, 2012)). As noted above, these NPDES permits for tribal wastewater discharges into Indian Waters were (and are) governed by Maine's WQS, and before its February 2, 2015 letter, EPA never raised any objections or concerns about the application of Maine's WQS in those Indian Waters.

111. Shortly thereafter, by letter dated May 29, 2012, and without informing Maine, PIN wrote EPA requesting a determination that PIN "qualifies pursuant to section 518 of the Clean Water Act for the purposes of seeking NPDES permit program approval for pollution discharges in the Penobscot River." (A copy of this letter and certain other communications between EPA and Maine's tribes are attached hereto as Exhibit 14).

112. By letter dated July 17, 2012, and without informing Maine, EPA initiated "consultation and coordination" with PIN regarding PIN's "request for a determination that the PIN qualifies

for treatment in the same manner as a state (TAS), pursuant to Section 518” of the CWA for purposes of PIN’s attempt to obtain NPDES permit program approval from the EPA for discharges into the Penobscot River. (Exhibit 14).

113. By letter dated August 23, 2012, and without informing Maine, EPA wrote to PIN as a follow-up to a meeting between PIN and EPA Region 1 staff held on July 25, 2012, which EPA described as “a very positive and productive meeting, as one step in EPA Region 1’s ongoing efforts to consult with the PIN and deliberate upon your request for a TAS determination for purposes of NPDES program authorization.” (Exhibit 14).

EPA’s secret communications with Maine Indian tribes regarding tribal WQS for and NPDES permitting authority over Maine waters

114. Beginning as early as 1999, and without informing Maine, EPA has been communicating with Maine Indian tribes regarding environmental matters such as a separate set of WQS (different from Maine’s WQS) for Maine’s Penobscot River. (Exhibit 14).

115. For instance, in July 1999, and without informing Maine, EPA and PIN, “in order to better achieve mutual environmental-governmental goals in the[ir] government-to-government relationship,” entered into a Tribal Environment Agreement that contemplates EPA’s implementation of its alleged federal trust responsibility towards PIN, contains a confidentiality agreement regarding communications between EPA and PIN, and commits EPA to using “best efforts to protect all such communications, including those that predate this agreement that are requested under the Freedom of Information Act.” (A copy of this agreement is attached hereto as Exhibit 15).

116. By letter dated February 4, 2000, and without informing Maine, EPA wrote PIN stating that EPA would “fully consider” PIN’s request that EPA promulgate separate WQS and administer CWA programs for PIN’s reservation in Maine. (Exhibit 14).

117. Without informing Maine, EPA sent letters dated March 6, 2013, to all four of Maine's recognized Indian tribes, which, citing EPA's alleged "federal trust responsibility and government-to-government relationship" with Maine's tribes, initiated "consultation and coordination" with the tribes regarding certain Maine WQS revisions (including arsenic) addressed by EPA's February 2, 2015 letter. The letters each acknowledge that "EPA's guidance for the development and approval of human health criteria for carcinogenic compounds allows states and tribes to use cancer risk levels between 10^{-6} and 10^{-4} as long as sensitive subpopulations are protected to at least the 10^{-4} cancer risk." (Exhibit 14).

118. Three months later, EPA, by letter dated June 24, 2013, informed Maine of its approval of Maine's WQS revisions for arsenic for non-Indian Waters only and of its "consultation and coordination" with Maine's tribes regarding Maine's WQS, stating that "[a]s part of EPA's trust responsibility to the tribes, EPA must consult with the tribes in Maine before determining whether to approve" Maine's human health criteria revisions for Indian Waters. (Exhibit 14).

119. To the extent that EPA claims any authority to invoke a federal "trust responsibility" with respect to Maine's Indian tribes in a manner that would affect Maine's state environmental regulatory jurisdiction, it would not apply in Maine. (25 U.S.C. §§ 1725(h) & 1735(b)).

120. Substantive statutes and regulations must expressly create a fiduciary relationship giving rise to defined obligations in order for any federal "trust responsibility" to exist with respect to Maine's Indian tribes, *Nulankeyutmonen Nkhihttaqmikon v. Impson*, 503 F.3d 18, 31 (1st Cir. 2007), and no such express relationship exists in Maine. (See also *Bangor Hydroelectric Co.*, 83 FERC P 61,037, 61,085 – 61,086, 1998 WL 292768 (with limited exceptions, Indian "reservation" lands in Maine are not held in trust by the federal government)).

121. By letter dated January 23, 2014, and without informing Maine, PIN wrote to EPA referencing the “ongoing government-to-government consultations” between EPA and PIN regarding the “administration and operation of the Clean Water Act within Penobscot Indian Reservation.” PIN’s January 23, 2014 letter to EPA also notified EPA of PIN’s intention to promulgate its own WQS pursuant to Sections 303 and 518(e) of the CWA, and sought EPA input on “issues surrounding any competing authorities between the EPA, the State, and the Penobscot Nation with respect to the promulgation of water quality standards within the Reservation.” (Exhibit 14).

122. As a follow-up to its January 23, 2014 letter, PIN, without informing Maine, sent EPA a letter dated February 27, 2014, referencing its prior request to EPA for input on “issues surrounding any competing authorities between the EPA, the State, and the Penobscot Nation with respect to the promulgation of water quality standards within the Reservation,” and inviting the EPA Regional Administrator and Region 1 staff to a meeting to discuss PIN’s forthcoming WQS application “in relation to the overall environmental regulatory regime within the Penobscot Indian Reservation.” (Exhibit 14).

123. EPA sent a letter dated April 18, 2014, apparently to all federally-recognized Indian tribes (including those in Maine), which states:

[EPA] is initiating consultation and coordination with federally-recognized Indian tribes concerning a potential reinterpretation of Clean Water Act provisions regarding treatment of tribes in the same manner as a state (TAS). The reinterpretation could reduce some of the time and effort for tribes submitting applications for TAS for regulatory programs under the Clean Water Act. Specifically, EPA is considering reinterpreting section 518(e) as a delegation by Congress of authority to eligible tribes to administer Clean Water Act regulatory programs over their entire reservations. This reinterpretation would replace EPA’s current interpretation that applicant tribes need to demonstrate their inherent regulatory authority. . . .

(Exhibit 14).

124. On or about June 10, 2014, PIN published for hearing and comment draft tribal WQS applicable to PIN Indian Waters, and on or about October 8, 2014, PIN, without informing Maine, applied to EPA Region 1 seeking TAS status for purposes of a separate PIN WQS program in Maine and EPA approval of PIN's proposed tribal WQS for PIN Indian Waters. EPA Region 1 acknowledged receipt of PIN's application by letter dated November 5, 2014, which did not copy Maine. (Exhibit 14). Maine received a copy of EPA's letter on or about December 2, 2014.

125. Maine learned after-the-fact of the 1999 Tribal Environment Agreement between EPA and PIN and many of the other communications between EPA and Maine's Indian tribes only as a result of Maine's own efforts, including Maine's requests for public records and information, discovery requests in other litigation, and independent research.

***From 2004-2015, EPA refused to act on
Maine's WQS for unspecified Indian Waters***

126. Beginning in approximately 2004, and despite its historical approvals of and adherence to Maine's WQS within Maine's Indian Waters, EPA began to limit its approvals of revisions to Maine's WQS to non-Indian Waters only. (Exhibit 1, Attachment A, pp. 1, 4, 14).

127. For example, EPA sent a letter to Maine dated February 9, 2004, which approved certain revisions to Maine's WQS, but which stated in part:

I hereby approve the revised water quality standards in Chapter 257. This approval is made pursuant to Section 303(c)(2) of the Clean Water Act and 40 CFR Part 131, and is based on my determination that the approved revisions are consistent with the requirements of Section 303 of the Act. . . .

EPA's approval of Maine's surface water standards revisions does not extend to waters that are within Indian territories and lands. EPA is taking no action to approve or disapprove the State's standards revisions with respect to those waters at this time. EPA will retain responsibility under Section 303(d) for those waters. . . .

Thereafter, and even after the issuance of *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007), EPA continued to include similar limiting language in additional EPA letters to Maine dated April 14, 2004; January 25, 2005; April 17, 2006; July 7, 2006; September 18, 2006; August 19, 2009; May 19, 2010; July 20, 2011; and May 16, 2013. (Copies of these letters are collectively attached as Exhibit 16).

128. In one such letter dated May 16, 2013, EPA formally approved (for non-Indian Waters only) Maine's revised WQS related to arsenic, including Maine's revised cancer Risk Level "used to calculate the human health criteria for arsenic from one in 1,000,000 [10^{-6}] to one in 10,000 [10^{-4}]" and Maine's revised numeric criteria for inorganic arsenic using a FCR of 138 grams/day, but EPA continued to take no action on those WQS with respect to Indian Waters. (Exhibit 16 (May 16, 2013 letter)).

129. In approving Maine's WQS for arsenic in non-Indian Waters, EPA's May 16, 2013 letter acknowledges:

Maine's revised numeric criteria for arsenic were derived using the same general methodology and equations used to calculate EPA's current 304(a) recommended criteria for carcinogens. . .

Cancer Risk Factor (RF): The State of Maine enacted LD 515 in 2011 directing DEP to revise Maine's human health water quality criteria for arsenic based on a cancer risk factor of 1 in 10,000 [10^{-4}] rather than the previous RF of 1 in 1,000,000 [10^{-6}]. EPA's recommended methodology for the derivation of water quality criteria states that 1 in 1,000,000 [10^{-6}] or 1 in 100,000 [10^{-5}] may be acceptable cancer risk factors for the general population and that highly exposed populations should not exceed a 1 in 10,000 [10^{-4}] risk level. [citing EPA's 2000 Guidance, Exhibit 5]

Fish Consumption Rate (FCR): Maine's previous 32.4 g/day FCR represents the 94th percentile for Native American anglers in Maine and the 95th percentile for the total angler population in Maine, based on data from a 1990 survey of licensed Maine anglers. In deriving the new arsenic criteria, DEP used 138 g/day, which is the 99th percentile of this survey, to ensure that the criteria are protective of subsistence fishers, a highly exposed population. This approach is consistent with EPA recommendations for estimating fish consumption rates for subsistence fishers and is appropriate to ensure that highly exposed subpopulations are not exposed to a risk level greater than 1 in 10,000 [10^{-4}]. [Table 1 omitted]

...

EPA approves of the WQS revision to the arsenic criteria on the basis of the demonstrated use of available sound science, including state specific data, to derive the new criteria. . . .

(Exhibit 16 (May 16, 2013 letter)).

130. EPA's refusal to act on Maine's WQS for Indian Waters continued even after the Maine Office of the Attorney General sent a letter to EPA dated October 27, 2009, stating:

As you know, it has now been established that Maine's environmental regulatory jurisdiction, in particular regarding water resources, applies uniformly throughout the State, and that jurisdiction applies to all of Maine's waters including those in the Penobscot River basin. *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007). Thus, it is clear that these standards apply to those areas previously disputed by the Maine tribes. In acting on the water quality standards set forth above, therefore, EPA should expressly confirm their applicability throughout Maine without exception.

(A copy of this letter is attached hereto as Exhibit 17).

131. EPA sent a letter dated October 16, 2012, to former Maine Attorney General William J. Schneider setting forth an apparent explanation for its recent (since 2004) failures to act on Maine's WQS for Indian Waters: "EPA's policy is that states are not authorized to implement federally approved environmental programs, like the WQS program under the federal Clean Water Act (CWA), in the territories of federally recognized tribes unless and until EPA has made clear findings on the record approving the state standards to apply in Indian country." (A copy of this letter is attached hereto as Exhibit 18).

132. This was contrary to not only the CWA and *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007), but also to EPA's WQS Handbook, which at least as of September 24, 2014, still stated in part:

Until tribes qualify for the standards program and adopt standards under the Clean Water Act, EPA will, when possible, assume that existing water quality standards remain applicable. EPA's position on this issue was expressed in a September 9, 1988, letter from EPA's then General Counsel, Lawrence Jensen, to Dave Frohnmayer, Attorney General for the State of Oregon. This letter states: "if States have established standards

that purport to apply to Indian reservations, EPA will assume without deciding that those standards remain applicable until a Tribe is authorized to establish its own standards or until EPA otherwise determines in consultation with a State and Tribe that the State lacks jurisdiction...”

(EPA WQS Handbook, § 1.8.6; because this portion of EPA’s WQS Handbook no longer exists online, a copy of the former Chapter 1 of EPA’s WQS Handbook (printed on August 22, 2014) is attached hereto as Exhibit 19).

133. In response to EPA’s refusals to act on Maine’s WQS for Indian Waters, Maine repeatedly asked EPA to identify what specific Maine waters comprised EPA’s undefined concept of Indian Waters, and what WQS, if any, EPA believed were in effect for Maine’s Indian Waters. (*See, e.g.*, letters to EPA dated January 14, 2013, and February 27, 2014, attached hereto as Exhibit 20).

134. Prior to EPA’s February 2, 2015 letter, EPA never advised Maine: 1) what specific Maine waters comprised EPA’s concept of Indian Waters; or 2) what WQS, if any, EPA believed were in effect for such Indian Waters.

135. While this action was pending, EPA issued its February 2, 2015 letter, which remains unclear as to what specific waterbodies comprise EPA’s concept of Indian Waters. (Exhibit 1, Attachment A, p. 7). The many other unlawful aspects of EPA’s February 2, 2015 letter include, without limitation, the twelve bulleted items set forth in paragraph 9 of this Second Amended Complaint.

EPA’s disapproval of Maine’s WQS reflects a larger EPA attempt to force States to accept the higher end of EPA’s criteria recommendations based on tribal considerations

136. In addition to EPA’s disapprovals of Maine’s WQS, EPA has also recently expressed its disapproval of other states’ human health criteria for their respective Indian Waters, even where

those other states' human health criteria (like Maine's) were within the range of EPA's recommended criteria options.

137. For instance, by letter dated March 23, 2015 (EPA's "Washington Letter"), EPA Region 10 stated its disapproval of a recent rule proposal by the State of Washington, which proposed to increase Washington's FCR from 6.5 grams/day to 175 grams/day and reduce its cancer Risk Level from 10^{-6} to 10^{-5} . (A copy of EPA's Washington Letter and attached EPA comments, as well as a response by the National Association of Clean Water Agencies ("NACWA") are attached hereto as Exhibit 21).

138. Contrary to EPA's 2000 Guidance, EPA's Washington Letter alleges that "a cancer risk level of 10^{-5} does not provide appropriate risk protection for all Washington citizens, including tribal members with treaty-protected fishing rights, when coupled with a fish consumption rate of 175 grams per day or higher." (Exhibit 21, at p. 1).

139. Echoing the new kind of approach outlined in EPA's February 2, 2015 letter to Maine (Exhibit 1), EPA's Washington Letter also asserts that EPA and Washington must "interpret the state's designated uses to include subsistence fishing," treat Washington's tribal population as "the target general population, not as a high-consuming subpopulation of the state," utilize FCR data reflecting tribal subsistence practices "unsuppressed by fish availability or concerns about the safety of the fish available for them to consume," and select a Risk Level that ensures "a minimum level of protection for that tribal target population when consuming fish at unsuppressed levels." (Exhibit 21 (Comments at pp. 2-3, 4-5)).

140. EPA's apparent rationale for its Washington Letter is based on the relationship between Risk Levels and FCRs (in a way that is inconsistent with States' roles under the CWA and that

violates EPA's own 2000 Guidance), and on treaty rights that are different from the terms of

Maine's 1980 Acts:

By using a 10^{-5} cancer risk level, the state has substantially offset the environmental benefits of raising the fish consumption rate for carcinogenic human health criteria. For tribes with treaty-protected fishing rights, this approach to the cancer risk level will not advance health protections consistent with their treaty-reserved right to harvest and eat fish and shellfish.

(Exhibit 21, pp. 1-2); *see also id.* at Comments at p. 2 ("In Washington, many tribes hold a treaty-reserved right to take fish for subsistence, ceremonial, religious, and commercial purposes at all usual and accustomed fishing grounds. . .") and p. 5 ("It should also be noted that the 2000 Human Health Methodology did not consider how CWA decisions should account for applicable treaty-reserved fishing rights, and the treaties themselves may require higher levels of protection."))

141. By letter dated May 13, 2015, the National Association of Clean Water Agencies ("NACWA") responded to EPA's Washington Letter in a way that carries equal force here in

Maine:

[T]he language in the CWA and the implementing regulations was not intended to give EPA authority to disapprove standards because the state's science and policy decisions are not identical to [EPA's] preference, policies and guidance. . . . In the case of Washington's proposed rule, which in fact was consistent with the range of values and approaches included in existing federal guidance, EPA appears to ignore the flexibility afforded to states in its own guidance by insisting that the state's program conform to EPA's preferred approach. These tactics are inconsistent with the CWA's cooperative federalism foundation and history that provides the states the responsibility for developing and approving water quality standards. . . . The structure established by the CWA – where EPA provides criteria recommendations and guidance and the states develop water quality standards based on that information as well as state policy and risk decisions (where a range of acceptable CWA options exist) – must be preserved to ensure that federal preference and the criteria recommendations do not become de facto regulations.

(Exhibit 21 (NACWA letter at pp. 2-3)).

142. EPA sent a similar letter and comments to Idaho dated May 29, 2015 (EPA's "Idaho Letter"), which responds to Idaho's proposed revisions to its human health criteria in a way that is similar to EPA's new and aggressive approach in Maine and Washington. (A copy of EPA's Idaho

Letter with EPA's comments is attached hereto as Exhibit 22; *see also id.* at Comments, p. 4 (outlining EPA's new position that states must select FCRs reflecting unsuppressed fish consumption, which EPA believes may be "necessary" to protect "tribal treaty or other reserved fishing rights"))).

143. EPA's recent attempts to force States such as Maine, Washington, and Idaho to adopt the higher end of EPA's criteria recommendations (set forth in EPA's long established guidance) appear to stem from a late 2014 policy directive made at EPA's national level "regarding the role of tribal treaty rights in the context of EPA's activities," which directive was developed outside of the context of Maine's unique Indian Settlement Acts and which encourages EPA to implement and "enhance protection of tribal treaty rights and treaty-covered resources [including "hunting, fishing, and gathering"] when [EPA has] discretion to do so." (Copies of memoranda on this directive from EPA's national leadership dated November 28, 2014, and December 1, 2014, are attached hereto as Exhibit 23).

***Count I – 5 U.S.C. §§ 701-706
Appeal of EPA's disapprovals of Maine's WQS set forth in
EPA's February 2, 2015 Letter under the Administrative Procedure Act***

144. Plaintiffs reallege the allegations contained in paragraphs 1 through 143 and incorporate them herein.

145. EPA's February 2, 2015 letter sets forth EPA final agency action(s) with respect to Maine's WQS for Indian Waters only, which have harmed Plaintiffs and which are reviewable by this Court under the Administrative Procedure Act, 5 U.S.C. §§ 701-706 ("APA"), and for which Plaintiffs have no other adequate remedy in court other than review under the APA.

146. EPA's disapprovals of Maine's WQS (*i.e.*, Maine's human health water quality criteria) for Indian Waters only set forth in EPA's February 2, 2015 letter, as well as EPA's supporting

rationale set forth in Attachment A to that letter, are, among other things within the meaning of 5 U.S.C. § 706(2), arbitrary, capricious, an abuse of discretion, and/or otherwise not in accordance with law (including, without limitation, the CWA and corresponding regulations, EPA's Section 304(a) and other guidance documents, the 1980 Acts and other Maine Indian Settlement Acts, and *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007)), in excess of EPA's jurisdiction and authority and without observance of required procedure under the same authorities, and unsupported by substantial evidence and unwarranted by the facts, inasmuch as Defendants, among other things: 1) do not define with specificity their concept of Maine's Indian Waters; 2) assert that no Maine WQS are currently or were ever in effect for Maine's Indian Waters; 3) assert that EPA's pre-2004 approvals of Maine's WQS did not extend to Indian Waters because EPA was first required to make a formal threshold determination that Maine has environmental regulatory jurisdiction over its Indian Waters; 4) assert that EPA's historical recognition of and acquiescence to the application of Maine's WQS in Indian Waters was mistaken; 5) assert that the purpose of MIA, MICSA, and each of Maine's other Indian Settlement Acts was to establish a land base from which Maine's Indian tribes could practice their unique cultures, including tribal sustenance living practices and fishing rights, free from Maine environmental regulation; 6) assert that Maine's WQS and the protection of Maine's own existing designated uses of its waterbodies must be "harmonized" by EPA with EPA's flawed interpretation of the underlying and unwritten purpose of MIA, MICSA, and Maine's other Indian Settlement Acts; 7) interpret the narrow portions of MIA permitting members of Maine's Southern Tribes to take fish without restriction within their reservations (provided that such fish takings are for individual sustenance only) as more broadly constituting a designated use of tribal "sustenance fishing" for the Southern Tribes in their respective Indian Waters; 8) assert a new interpretation of Maine's longstanding

designated use of “fishing,” as used throughout Maine’s established Water Classification Program, as now meaning tribal “sustenance fishing” with respect to each of Maine’s Indian tribes in their respective Indian Waters; 9) usurp Maine’s role as a State under the CWA by purporting to establish EPA’s own new WQS in Maine (*i.e.*, EPA’s newly-created designated use of tribal “sustenance fishing”) without any public input or other required process; 10) interpret EPA’s own new designated use of tribal “sustenance fishing” as in turn requiring an implicit, bootstrapped right to heightened water quality in Indian Waters (and potentially beyond) in order to protect EPA’s new use by ensuring a higher quality of fish for tribal-only sustenance purposes; 11) focus on a tribal-only fish consuming population, as opposed to Maine’s general population, as the “target” population to be protected by EPA’s new designated use of tribal “sustenance fishing”; 12) interpret EPA’s new designated use of tribal “sustenance fishing” as requiring an unsuppressed tribal FCR based on a newly announced historical tribal fish consumption study that was never the subject of any public input process; and 13) disapprove Maine’s human health water quality criteria for Indian Waters only as being un-protective of EPA’s new tribal “sustenance fishing” designated use for those unspecified waters.

Count II – 28 U.S.C. §§ 2201, 2202
Requests for declaratory relief under the Declaratory Judgment Act

147. Plaintiffs reallege the allegations contained in paragraphs 1 through 146 and incorporate them herein.

148. An actual controversy within the Court’s jurisdiction exists between the parties regarding EPA’s disapprovals of Maine’s WQS (*i.e.*, Maine’s human health water quality criteria) for Indian Waters only set forth in EPA’s February 2, 2015 letter, as well as EPA’s supporting rationale set forth in Attachment A to that letter, including, without limitation, EPA’s interpretations of the CWA and corresponding regulations, the 1980 Acts and Maine’s other Indian Settlement Acts,

EPA's Section 304(a) and other guidance documents, and applicable case law, and EPA's assertions identified in paragraphs 9 and 146 of this Second Amended Complaint.

149. Additional actual controversies within the Court's jurisdiction also exist between the parties, including the following: 1) whether under the CWA and the 1980 Acts Maine's pre-2004 WQS were already approved and remain approved for Maine's non-Indian and Indian Waters; 2) whether Maine can lawfully be, or have been without, any WQS for Indian Waters, as EPA's rationale in its Attachment A to its February 2, 2015 letter states; 3) whether EPA waived all rights to disapprove, or is otherwise barred from disapproving, some or all of Maine's WQS that were previously approved without qualification as to their effect in Indian Waters by EPA, or that have been approved for adjacent non-Indian Waters; 4) whether there are any Indian Waters that warrant different environmental regulatory treatment from other Maine waters, and/or special treatment for members of Maine's Indian tribes from the standpoint of water quality regulation; 5) the meaning of the narrow portions of MIA permitting members of Maine's Southern Tribes to take fish without restriction within their reservations provided that the taking of such fish is for the members' individual sustenance only, and whether such portions of MIA amount to a designated use tribal "sustenance fishing" for any Maine waterbodies; 6) the meaning of Maine's longstanding designated use of "fishing" within Maine's established Water Classification Program, and whether that designated use also encompasses a separate tribal "sustenance fishing" designated use with respect to each of Maine's Indian tribes within their respective Indian Waters; 7) whether EPA may create its own designated use of tribal "sustenance fishing" for Maine, and if so, whether EPA can do so without the benefit of any public input or process; 8) whether EPA may select a tribal-only fish consuming population as the target population to be protected under provisions of Maine law, the CWA, and EPA's regulations; and 9) the range of

acceptable Risk Levels and FCRs available to States such as Maine under the CWA and existing EPA Section 304(a) guidance, whether EPA can restrict those options without new guidance subject to a public input process, and whether Maine's Risk Levels and FCRs fall within permissible EPA criteria options for WQS purposes.

150. Declarations by the Court of the rights and legal relations of the parties will redress the existing actual controversies between the parties, and the requested declarations in favor of Plaintiffs will redress the harms to Plaintiffs.

Count III – 33 U.S.C. §§ 1313, 1365(a)(2)
EPA's failure to perform non-discretionary duties under the CWA

151. Plaintiffs reallege the allegations contained in paragraphs 1 through 150 and incorporate them herein.

152. Plaintiffs are entitled to commence a civil action on their own behalf against Defendants pursuant to 33 U.S.C. §§ 1365(a)(2), 1365(g).

153. Plaintiffs have provided the requisite notice pursuant to 33 U.S.C. § 1365(b) by virtue of a certified letter sent to the EPA Administrator and the United States Attorney General dated 1) March 17, 2015, which, per that letter's return receipts, was received by both EPA and the U.S. Attorney General on March 23, 2015. (A copy of the March 17, 2015 notice letter and corresponding return receipts is attached hereto as Exhibit 24).

154. Defendants have a non-discretionary, official and public duty under the CWA, 33 U.S.C. § 1313, and the 1980 Acts to approve, and have no discretion to disapprove, WQS for Maine's Indian Waters where those same standards have been determined to be consistent with the CWA, 33 U.S.C. § 1313, and 40 C.F.R. §§ 131.5 & 131.6, and approved by EPA for Maine's non-Indian Waters, and where no Indian tribe has been authorized by EPA to promulgate WQS or administer a WQS program in Maine pursuant to 33 U.S.C. § 1377(e) and/or 40 C.F.R. § 131.8.

155. Defendants failed to fulfill this non-discretionary duty by disapproving Maine's WQS (*i.e.*, its human health water quality criteria) for Indian Waters only, as set forth in its February 2, 2015 letter, which WQS had already been determined to be consistent with the CWA and approved by EPA for Maine's non-Indian Waters.

156. Defendants have a non-discretionary, official and public duty under the CWA and the 1980 Acts to approve, and have no discretion to disapprove, Maine's WQS that EPA already approved without qualification as to their effect in Maine's Indian Waters (*i.e.*, before 2004), where no Indian tribe has been authorized by EPA to promulgate WQS or administer a WQS program in Maine pursuant to 33 U.S.C. § 1377(e) and/or 40 C.F.R. § 131.8.

157. Defendants failed to fulfill this non-discretionary duty by disapproving Maine's WQS (*i.e.*, its human health water quality criteria) for Maine's Indian Waters only, as set forth in its February 2, 2015 letter, to the extent those disapprovals extend to Maine's WQS previously approved by EPA before 2004 without qualification as to their effect in Maine's Indian Waters.

158. Defendants have a non-discretionary, official and public duty under the CWA and the 1980 Acts to disapprove Maine's WQS within 90 days of their submission to EPA, and Defendants have no discretion to disapprove Maine's WQS for Indian Waters only after expiration of the 90 day deadline where no Indian tribe has been authorized by EPA to promulgate WQS or administer a WQS program in Maine pursuant to 33 U.S.C. § 1377(e) and/or 40 C.F.R. § 131.8.

159. Defendants failed to fulfill this duty by disapproving Maine's WQS (*i.e.*, its human health water quality criteria) for Maine's Indian Waters only, as set forth in EPA's February 2, 2015 letter, which occurred well beyond any applicable 90-day deadline for such disapprovals.

160. Prior to the issuance of EPA's February 2, 2015 letter, Defendants waived all right to disapprove and/or specify any changes required for approval of, or are otherwise legally barred

from disapproving, Maine's WQS that had historically been approved by EPA without qualification as to their effect in Indian Waters (*i.e.*, before 2004), and that had previously been fully approved by EPA for non-Indian Waters.

161. Defendants have a non-discretionary, official and public duty under the CWA to approve Maine's WQS that are consistent with EPA Section 304(a) guidance, and Defendants have no discretion to disapprove Maine's WQS provided they are within the acceptable range of EPA's guidance.

162. Defendants failed to fulfill this duty by failing to approve Maine's WQS (*i.e.*, its human health water quality criteria) that were well within the range of acceptable EPA criteria recommendations considering the relative relationship of Maine's FCRs and Risk Levels.

163. The failure by Defendants and EPA to perform their non-discretionary duties under the CWA and the 1980 Acts and approve Maine's WQS at issue in EPA's February 2, 2015 letter has harmed Plaintiffs, and the relief requested by Plaintiffs will redress those harms.

164. Plaintiffs are seeking their litigation costs, including attorneys' fees, pursuant to 33 U.S.C. § 1365(d).

Requests For Relief

Plaintiffs request from the Court the following relief:

- a. A declaration and order setting aside as unlawful and void each of EPA's disapprovals of Maine's WQS (*i.e.*, Maine's human health water quality criteria) set forth in EPA's February 2, 2015 letter, as well as EPA's rationale for those disapprovals;
- b. A declaration and order that all Maine WQS that are or were approved by EPA for non-Indian Waters are also required under the CWA and the 1980 Acts to be approved by EPA for Indian Waters;

- c. A declaration and order that all of Maine's WQS submitted to EPA prior to 2004 that purported to apply to Indian Waters and that were previously approved by EPA for non-Indian Waters only were fully approved by EPA for both Indian Waters and non-Indian Waters, and were in effect for Indian Waters as of the date of their approval by EPA for non-Indian Waters;
- d. A declaration and order that, in Maine and under the 1980 Acts, EPA's concept of Indian Waters has no relevance or meaning for WQS purposes under the CWA, and EPA may not lawfully base any disapproval of Maine's WQS on any distinctions between Indian Waters and non-Indian Waters, or between Maine's tribal population and its general population;
- e. A declaration and order that the portions of MIA permitting members of Maine's Southern Tribes to take fish without restriction (within their reservations provided that the taking of such fish is for the members' individual sustenance only) relate only to IFW and/or MITSC restrictions on things such as the "method, manner, bag and size limits and season for fishing," and do not, for CWA and WQS purposes, constitute a separate "sustenance fishing" designated use for any waterbodies in Maine for CWA and WQS purposes, entitle any Maine Indian tribes or members to any special rights or status greater than the rest of Maine's general population, or require any heightened quality of water or fish in any waterbodies;
- f. A declaration and order that Maine's longstanding designated use of "fishing" as used in Maine's established Water Classification Program for all Maine waterbodies does not, for CWA and WQS purposes, encompass or also constitute a separate "sustenance fishing" designated use for any waterbodies in Maine, entitle any Maine Indian tribes or members to any special rights or status greater than the rest of Maine's general population, or require any heightened quality of water or fish in any waterbodies;

- g. A declaration and order that, when developing WQS under the CWA for any of its intrastate water bodies, Maine retains the flexibility to choose from among its many CWA options any of EPA's acceptable criteria recommendations set forth in EPA's Section 304(a) guidance documents, including EPA's 2000 Guidance, and may rely on its chosen EPA criteria recommendations as a lawful basis for establishing enforceable Maine WQS under the CWA;
- h. An order awarding Plaintiffs their attorneys' fees and costs incurred in bringing and maintaining this action pursuant to 33 U.S.C. § 1365(d), 28 U.S.C. § 2412, and 5 U.S.C. § 504; and
- i. Such further and additional relief as the Court may deem just and proper.

Dated: October 8, 2015

Respectfully submitted,

JANET T. MILLS
Attorney General

/s/ Scott W. Boak
SCOTT W. BOAK
Assistant Attorney General
Six State House Station
Augusta, Maine 04333-0006
Tel. (207) 626-8566
scott.boak@maine.gov

GERALD D. REID
Assistant Attorney General
Chief, Natural Resources Division
Six State House Station
Augusta, Maine 04333-0006
Tel. (207) 626-8545
jerry.reid@maine.gov

CHRISTOPHER C. TAUB
Senior Litigation Counsel
Litigation Division
Six State House Station
Augusta, Maine 04333-0006
Tel. (207) 626-8565
christopher.c.taub@maine.gov

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 2015, I electronically filed Plaintiffs' Second Amended Complaint and exhibits with the Clerk of Court using the CM/ECF system, which will send notification and a copy of such filing(s) to all counsel of record who have consented to electronic service, including the following:

- **DAVID A. CARSON**
david.a.carson@usdoj.gov
- **JOHN G. OSBORN**
john.osborn2@usdoj.gov
Amy.Imbergamo@usdoj.gov
Christine.Melhorn@usdoj.gov
usame.ecf@usdoj.gov

/s/ Scott W. Boak
SCOTT W. BOAK
Assistant Attorney General
6 State House Station
Augusta, Maine 04333-0006
Tel. (207) 626-8566
Fax (207) 626-8812
Scott.Boak@maine.gov



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502
www.deq.idaho.gov

C.L. "Butch" Otter, Governor
John H. Tippetts, Director

February 28, 2017

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue Mail Code: 1101A Washington D.C. 20460

Re: Request for Approval of Idaho's Revised Water Quality Standards,
Human Health Criteria

Dear Administrator Pruitt:

I am writing to request that the EPA formally approve the revised water quality standards, Human Health Criteria update (HHC) that the Idaho Department of Environmental Quality (IDEQ) submitted to EPA Region 10 for approval on December 13, 2016. The package of supporting material submitted at that time (and enclosed with this letter) demonstrates that the revised HHC meet all required statutory and regulatory requirements for approval.

As you have emphasized throughout your career and upon taking the helm at EPA, the nation's environmental laws, including the Clean Water Act (the Act), are built on the principle of cooperative federalism. Under the CWA, states have the primary responsibility to develop water quality standards, including the criteria necessary to protect the designated uses of the waters of the state. While EPA issues recommended national HHC pursuant to Section 304(a) of the Act, those criteria are only guidance and states should adapt them as needed to protect their waters. The states' criteria must protect the designated use and be based on "sound scientific rationale" (40 C.F.R. § 131.11(a)). Finally, under existing regulations (40 C.F.R. § 131.11(b)), states may adopt the EPA national criteria; modify the national criteria to reflect site-specific conditions; or develop other "scientifically defensible" criteria.

The revised HHC IDEQ submitted for approval were developed through an open, transparent stakeholder process that took several years. IDEQ made available the data and scientific support for its HHC throughout that process, as well as the rationale for the policy choices it made—choices clearly left to the discretion of the states under the Act, EPA rules and guidance. The process culminated with the approval of the HHC Rule before the Idaho Board of Environmental Quality in December 2015 and the Idaho Legislature, in 2016.

In a January 19th letter, the then-EPA Regional Administrator responded to IDEQ informing the agency that EPA had serious concerns with the revised HHC and questioned whether the package was approvable. The letter raised a number of concerns about tribal treaty rights, the proper calculation of fish consumption rates, IDEQ risk policy choices and other aspects of the HHC. Many of those concerns are based on arguments with no legal foundation in the Act or on disagreements with IDEQ's policy choices. However, the "Idaho Human Health Criteria Update

Justification and Compliance with the Clean Water Act" document included as part of the submittal more than adequately addresses the concerns included in EPA's letter.

The concerns raised by EPA regarding Idaho's HHC are very similar to those raised by EPA when it disapproved HHC adopted by Washington and Maine. Like Idaho, Washington and Maine developed HHC in accordance with the CWA, federal regulations and EPA national guidance. Nevertheless, EPA disapproved the criteria and based its disapproval on the rejection of policy choices allowed States under the law. Petitions have been filed in both Washington and Maine asking EPA to withdraw its disapproval.

Thank you for your consideration of Idaho's request for approval of our revised HHC. We look forward to hearing from you soon, and to working cooperatively with you and your staff in the future.

Sincerely,

A handwritten signature in cursive script, reading "John H. Tippetts".

John H. Tippetts
Director

JHT:ra

Enclosures

c: Michelle L. Prizadeh, EPA Region 10 Acting Administrator

To: Schnare, David[schnare.david@epa.gov]
From: Cathy Milbourn
Sent: Fri 2/17/2017 7:35:38 PM
Subject: EMBARGOED RELEASE:Scott Pruitt Confirmed and Sworn in as EPA Administrator

EMBARGOED UNTIL 5:30 P.M. EST FEB. 17, 2017

CONTACT:
Press@epa.gov

Scott Pruitt Confirmed and Sworn in as EPA Administrator

WASHINGTON--Today, Oklahoma Attorney General Scott Pruitt was confirmed and sworn in as the 14th administrator of the U.S. Environmental Protection Agency (EPA).

Administrator Pruitt believes promoting and protecting a strong and healthy environment is one of the lifeblood priorities of the government, and EPA is a vital part of that mission.

Pruitt became a national leader through a career of advocating to keep power in the hands of hardworking Americans. He has a proven record of working with industry, farmers, ranchers, landowners, small business owners and others to protect our natural resources.

As a dedicated civil servant, Pruitt created policies that serve the people. He strongly believes environmental law, policy, and progress are all based on cooperation among the states, cooperation between the states and EPA, and cooperation between regulators and the public.

As Administrator, Mr. Pruitt will lead EPA in a way that our future generations inherit a better and healthier environment while advancing America's economic interests. He is committed to working with the thousands of dedicated public servants at EPA who have devoted their careers to helping realize this shared vision, while faithfully administering environmental laws.

Most recently, Administrator Pruitt served as the Attorney General for Oklahoma. He worked with his Democratic counterpart in Arkansas to reach agreement to study the water quality of the Illinois River that crosses between the two states and has been enjoyed by generations of Oklahomans and Arkansans. The Statement of Joint Principles provided for a best science study using EPA-approved methods, with both states agreeing, for the first time, to be bound by the outcome.

During his tenure as Oklahoma's Attorney General, Mr. Pruitt led an historic water rights settlement between the State of Oklahoma, Oklahoma City and the Choctaw and Chickasaw Nations that preserved the ecosystems of scenic lakes and rivers on native lands. The agreement, which required Congressional approval, was signed into law on December 2016.

The Law provides a framework that fosters intergovernmental collaboration on significant water resource concerns while protecting existing water rights and affirming the State's role in water rights permitting and administration. Water settlement cases can be lengthy, costly, divisive and disruptive, however under Pruitt's forward thinking leadership the process was hailed by all parties as one of commitment, hard work, perseverance and cooperation.

As Attorney General for Oklahoma, he also led the State's legal challenges against property rights intrusion while protecting Oklahoma's natural resources and environment.

Administrator Pruitt is recognized as a national leader in the cause to restore the proper balance between the states and federal government, and established common sense regulations that are fair and provide relief where needed. Before being elected attorney general, he served eight years in the Oklahoma State

Senate where he was a leading voice for fiscal responsibility.

After earning his Bachelor's Degree from Georgetown College and graduating from the University of Tulsa law school, Pruitt went into private legal practice, specializing in Constitutional Law.

In addition to his life as a civil servant, Administrator Pruitt is a successful entrepreneur. As a co-owner and managing general partner of Oklahoma City's Triple-A minor league baseball affiliate, the Oklahoma City RedHawks, Mr. Pruitt took over the team's marketing operations and helped the team become one of the league's leaders in attendance and merchandise sales.

Scott Pruitt is, first and foremost, a family man. Scott and Marlyn, his wife of 27 years, proudly raised their daughter, McKenna, and son, Cade, in Tulsa. Scott has made it a priority to pass on to his children the same principled, family values with which he was raised.

To see Administrator Pruitt's biography, visit: <https://www.epa.gov/aboutepa/epas-administrator>

R020

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking [here](#).
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

To: Schnare, David[schnare.david@epa.gov]; Konkus, John[konkus.john@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Benton, Donald[benton.donald@epa.gov]
From: Jackson, Ryan
Sent: Fri 3/10/2017 11:29:09 AM

Don't worry about that 8. We have our marching orders.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

To: Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Richardson, RobinH
Sent: Tue 3/7/2017 9:19:59 PM
Subject: RE: Letter to Administrator Pruitt EPA re Unredacted FOIA Documents

Hi David – Will coordinate with Tom and will get back to you. Thank you, Robin

Robin H Richardson

Principal Deputy Associate Administrator

Office of Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-3358 (desk)

703-581-5814 (cell)

richardson.robinh@epa.gov

From: Schnare, David
Sent: Tuesday, March 07, 2017 4:13 PM
To: Richardson, RobinH <Richardson.RobinH@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject: FW: Letter to Administrator Pruitt EPA re Unredacted FOIA Documents

Robin:

Can you check in with Tom Dickerson to see where we are on this and does anyone needs to give an ok to producing these to Chairman Chaffetz, and if so, who.

d.

From: McGrath, William [<mailto:William.McGrath@mail.house.gov>]
Sent: Tuesday, March 7, 2017 3:34 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: FW: Letter to Administrator Pruitt EPA re Unredacted FOIA Documents

David,

Attached is a letter that Chairman Chaffetz sent to the EPA today requesting 275 specific redacted documents the Committee has pulled from public foia documents. The documents are being sent in 6 attachments to Tom Dickerson due to the size. I'd be happy to provide you with a cd of the documents if you would like or can forward the 6 other emails.

Any assistance you could provide in expediting a response to the Committee would be appreciated.

Regards,

Bill

Bill McGrath

Staff Director

Subcommittee on Interior, Energy and Environment

House Committee on Oversight and Gov't Reform

Phone: (202) 225-6534

Email: William.McGrath@mail.house.gov

From: Casey, Sharon
Sent: Tuesday, March 7, 2017 3:24 PM
To: Dickerson.Tom@epa.gov
Cc: Feeley, Drew <Drew.Feeley@mail.house.gov>; McGrath, William <William.McGrath@mail.house.gov>; McKenna, Liam <Liam.McKenna@mail.house.gov>
Subject: Letter to Administrator Pruitt EPA re Unredacted FOIA Documents

Attached please find a letter from Chairman Chaffetz of the U.S. House of Representatives Committee on Oversight and Government Reform. Please note the letter requests a response by March 21, 2017.

Attachments will follow in 6 emails.

Please acknowledge receipt of this letter.

Thank you,

Sharon Casey

Sharon Ryan Casey

Deputy Chief Clerk



Committee on Oversight and Government Reform

2157 Rayburn Building, Washington, DC 20515

202-593-8219 sharon.casey@mail.house.gov

To: Dunham, Sarah[Dunham.Sarah@epa.gov]; Schnare, David[schnare.david@epa.gov]
Cc: Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Orlin, David[Orlin.David@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Minoli, Kevin
Sent: Fri 3/3/2017 9:24:58 PM
Subject: RE: CAFE discussion draft: joint DOT-EPA notice

Deliberative Process Privilege/Ex. 5

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Dunham, Sarah
Sent: Friday, March 03, 2017 3:57 PM
To: Schnare, David <schnare.david@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>
Cc: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE: CAFE discussion draft: joint DOT-EPA notice

Deliberative Process Privilege/Ex. 5

From: Schnare, David
Sent: Friday, March 03, 2017 7:22 AM
To: Dunham, Sarah <Dunham.Sarah@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>
Cc: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE: CAFE discussion draft: joint DOT-EPA notice

Sarah:

Deliberative Process Privilege/Ex. 5

dschnare

From: Dunham, Sarah
Sent: Thursday, March 2, 2017 8:34 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Re: CAFE discussion draft: joint DOT-EPA notice

Kevin, David, Ryan-

I am coming a little late to his conversation and am only seeing these questions and answers now. So it may be there has already been a lot of conversation, and I do know the plan is to put something out soon. But as with everything, there are a lot of complexities and technical aspects related to the mid term evaluation in addition to the legal questions.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Sarah

On Mar 2, 2017, at 6:59 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

David- Below you will find a response to the questions regarding the procedural requirements that will attach to each phase of a reconsideration of the MTE. Credit goes to David Orlin in our Air and Radiation Law Office. We are comfortable with you sharing this within EPA or the Executive Branch if needed. Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Attorney-Client/Ex. 5

Deliberative Process Privilege/Attorney-Client/Ex. 5

Deliberative Process Privilege/Attorney-Client/Ex. 5

Deliberative Process Privilege/Attorney-Client/Ex. 5

Appendix:

EPA's regulation governing the Mid-Term Evaluation:

40 CFR 86.1818-12(h)

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

David Orlin

U.S. EPA, Office of General Counsel

(202) 564-1222

From: "Schnare, David" <schnare.david@epa.gov>

Date: March 2, 2017 at 7:12:19 AM EST

To: "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>
Subject: FW: CAFE discussion draft: joint DOT-EPA notice

Kevin:

Deliberative Process Privilege/Ex. 5

dschnare

From: Schnare, David
Sent: Thursday, March 2, 2017 5:29 AM
To: Catanzaro, Michael J. EOP/WHO **EOP/Ex. 6**
Cc: Smith, Loren (OST) <Loren.Smith@dot.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Smith, Ja'Ron K. EOP/WHO <**EOP/Ex. 6**>; McCown, Brigham (OST) <brigham.mccown@dot.gov>; Fiorentino, Marty (OST) <marty.florentino@dot.gov>; Fulton, Finch (OST) <Finch.Fulton@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; Moran, John S. EOP/WHO <**EOP/Ex. 6**>
Subject: Re: CAFE discussion draft: joint DOT-EPA notice

We won't have our general counsels chop until probably Friday. If I can accelerate that, I will.

dschnare

Sent from my iPhone

On Mar 2, 2017, at 12:27 AM, Catanzaro, Michael J. EOP/WHO

EOP/Ex. 6

> wrote:

Loren, thanks very much. Appreciate the helpful response. I'm adding John Moran from WHC, who flagged this issue. I suggest David S., EPA counsel, John and I (and whoever else wants to join) get on a quick call tomorrow to nail this down. Loren,

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Can the group do a call at 9:30 tomorrow?

Sent from my iPhone

On Mar 1, 2017, at 11:55 PM, Smith, Loren (OST)

<Loren.Smith@dot.gov> wrote:

Michael,

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Loren Smith

USDOT

Personal Phone/Ex. 6 (cell)

On Mar 1, 2017, at 11:04 PM, Catanzaro, Michael J. EOP/WHO

<EOP/Ex. 6> wrote:

Great, thanks Loren. Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

From: Smith, Loren (OST) [<mailto:Loren.Smith@dot.gov>]

Sent: Wednesday, March 1, 2017 7:35 PM

To: Schnare, David <schnare.david@epa.gov>

Cc: Catanzaro, Michael J. EOP/WHO

<EOP/Ex. 6>; Jackson, Ryan

<jackson.ryan@epa.gov>; Smith, Ja'Ron K. EOP/WHO

<EOP/Ex. 6>; McCown, Brigham (OST)

<brigham.mccown@dot.gov>; Fiorentino, Marty (OST)

<marty.fiorentino@dot.gov>; Fulton, Finch (OST)

<Finch.Fulton@dot.gov>; Pugliese, Anthony (OST)

<anthony.Pugliese@dot.gov>

Subject: Re: CAFE discussion draft: joint DOT-EPA notice

Deliberative Process Privilege/Ex. 5

Sent from my iPhone

On Mar 1, 2017, at 7:14 PM, Schnare, David

<schnare.david@epa.gov> wrote:

Deliberative Process Privilege/Ex. 5

Sent from my iPhone

On Mar 1, 2017, at 7:11 PM, Catanzaro, Michael J. EOP/WHO

<[REDACTED] EOP/Ex. 6 [REDACTED]> wrote:

Deliberative Process Privilege/Ex. 5

From: Smith, Loren (OST) [mailto:Loren.Smith@dot.gov]

Sent: Tuesday, February 28, 2017 6:02 PM

To: Schnare, David <schnare.david@epa.gov>;

jackson.ryan@epa.gov; Smith, Ja'Ron K. EOP/WHO

<[REDACTED] EOP/Ex. 6 [REDACTED]>; Catanzaro, Michael J.

EOP/WHO <[REDACTED] EOP/Ex. 6 [REDACTED]>; McCown,

Brigham (OST) <brigham.mccown@dot.gov>; Fiorentino,

Marty (OST) <marty.fiorentino@dot.gov>; Fulton, Finch

(OST) <Finch.Fulton@dot.gov>

Subject: CAFE discussion draft: joint DOT-EPA notice

Importance: High

Gentlemen, as discussed yesterday. Attached please find DOT/NHTSA's initial discussion draft for moving forward on CAFÉ/GHG standards for light-duty vehicles.

We look forward to your comments.

+++

Loren Smith

U.S. Department of Transportation

West Building – W85-115

loren.smith@dot.gov

Personal Phone/Ex. 6

<MTE reg.docx>

To: Schnare, David[schnare.david@epa.gov]
From: Bromberg, Kevin L.
Sent: Thur 3/2/2017 6:53:20 PM
Subject: RE: New Administration Contact at EPA re. CERCLA 108(b)

That would be fruitless until we find someone who is willing to engage on the real issues. I'll think about this some more, and get back to you.

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Wednesday, March 01, 2017 5:51 PM
To: Bromberg, Kevin L.
Subject: RE: New Administration Contact at EPA re. CERCLA 108(b)

Their contact is OLEM. It's the only way in we are going to give them. We simply don't have the staff to deal with this any other way.

d.

From: Bromberg, Kevin L. [mailto:kevin.bromberg@sba.gov]
Sent: Wednesday, March 1, 2017 5:02 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: FW: New Administration Contact at EPA re. CERCLA 108(b)

Who can the state mining regulators talk to? (see below) This is a good group – and of course, knows all about the mining regulations. Beth is the deputy to IMCC. They don't want to talk to the EPA OSWER office.

Also, Jonathan Gledhill of Policy Navigation Group, representing Freeport (US largest mining company) and National Mining Association also will be reaching out to Pruitt to talk to somebody from transition team to talk HRM CERCLA 108(b). I was asked just to let you know (they don't know your identity).

We can catch up maybe later tomorrow or later. I'm at EPA tomorrow (Clinton East) for a 3:00 TRI briefing, should I come over to say hi when I'm done?

Kevin

From: Beth Botsis [<mailto:bbotsis@imcc.isa.us>]
Sent: Wednesday, March 01, 2017 4:55 PM
To: Bromberg, Kevin L.
Subject: New Administration Contact at EPA re. CERCLA 108(b)

Kevin,

It was good talking with you. Per our conversation, if you know of/can get us in touch with a contact person for the new Administration who is assigned to the CERCLA 108(b) hardrock FA proposed rule that IMCC and/or the states could talk with regarding their concerns, it would be very helpful. We may also reach out directly to Secretary Pruitt at some point, now that he is on board.

Thanks again,

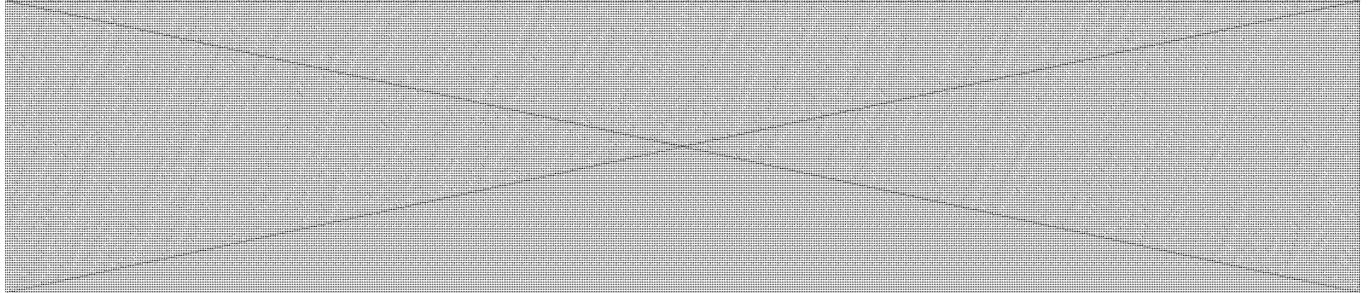
Beth

Beth A. Botsis
Deputy Executive Director
Interstate Mining Compact Commission
445A Carlisle Drive
Herndon, VA 20170
Ph: 703.709.8654
Fax: 703.709.8655
Email: bbotsis@imcc.isa.us

Website: www.imcc.isa.us



To: Don Benton[benton@pacifier.com]; Ericksen, Doug[ericksen.doug@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Konkus, John
Sent: Wed 2/15/2017 6:32:16 PM
Subject: FYI: Scott Pruitt: 'An Ideal Nominee For EPA Administrator'



Contact:

Antonia Ferrier 202.228.NEWS

<http://bit.ly/2l88KEt>

Scott Pruitt: 'An Ideal Nominee For EPA Administrator'

*'Attorney General Pruitt Has Proven Over The Course Of His Career
That He Has The Right Character, Experience, And Knowledge To
Serve As The Administrator Of*

The EPA'

JOHN BARRASSO (R-WY), SENATE ENVIRONMENT & PUBLIC WORKS

COMMITTEE CHAIRMAN:

“Through six hours of questioning before our committee ... Scott Pruitt showed that he understands the need to return the Environmental Protection Agency back to its proper course. He showed that he is committed to working as a partner with Americans

all across the country – to find the best ways to address the threats to our environment.

His record as the attorney general of Oklahoma showed that he is committed to restoring and maintaining the rule of law. I’m confident that Attorney General Pruitt will be able to right the ship at the EPA.”

(Sen. Barrasso, Press Release, 1/24/2017)

**FELLOW STATE ATTORNEYS GENERAL: Pruitt ‘Was A Staunch
Defender Of Sound Science And Good Policy As Appropriate Tools To
Protect The Environment Of**

His State’

24 STATE ATTORNEYS GENERAL: “As the attorneys general of our respective states, we write to express our unqualified support for our colleague and the Attorney General of Oklahoma, E. Scott Pruitt, as Administrator of

the U.S. Environmental Protection Agency. . . The Administrator of the Environmental Protection Agency plays a critical role in our nation’s government.

Attorney General Pruitt has proven over the course of his career that he has the right character, experience, and knowledge to serve as the Administrator of the EPA. We urge the Senate to confirm his nomination.”

(24 State Attorneys General, Letter to Sens. Barrasso and Carper, 1/04/2017)

•

“As attorneys general, we understand the need to work collaboratively to address threats to our environment that cross state lines, as well as the importance of a federal counterpart in the EPA Administrator who possesses the knowledge,

experience, and principles to work with our states to address issues affecting our environment.

We believe that no one exemplifies these qualities more than Scott Pruitt.”

(24 State Attorneys General, Letter to Sens. Barrasso and Carper, 1/04/2017)

•

“As the Attorney General of Oklahoma, Mr. Pruitt developed expertise in environmental law and policy. . . Attorney General Pruitt is committed to clean air and clean water, and to faithfully executing the environmental laws written by

Congress. He believes that environmental regulations should be driven by state and local governments—a notion endorsed by Congress in the Clean Air Act and Clean Water Act.

When our nation is confronted with issues affecting the environment that are not covered by a particular statute, Scott will come to Congress for a solution, rather than inventing power for his agency. He wholeheartedly believes in a strong Environmental

Protection Agency that carries out its proper duties, providing a backstop to state and local regulators as they develop environmental regulations suited to the needs of their own communities.”

(24 State Attorneys General, Letter to Sens. Barrasso and Carper, 1/04/2017)

FORMER OKLAHOMA ATTORNEY GENERAL MIKE TURPEN (D):

“As a lifelong Democrat, I may not agree with all of the President-elect’s policies or nominees, but I do know that Oklahoma Attorney General Scott Pruitt is a good choice to head up the Environmental Protection Agency. . . Scott Pruitt’s background in constitutional

law, combined with a nuanced understanding of how environmental regulations affect the economy, mean that he will be a thoughtful leader of the EPA, and one capable of striking the balance between protecting the environment and our economy. . .

(Mike Turpen, Op-Ed, “Pruitt Is a Balanced Selection for EPA Chief,” InsideSources.com, 12/12/2016)

•

TURPEN: “As a Democrat, I take seriously the threats to our environment, and I believe we must work to address issues such as pollution, climate change, and ensuring clean air and water... [T]he job of the EPA is the essential

mission of guaranteeing clean air and clean water. Scott Pruitt has never compromised those critical components of a healthy population with any actions he has taken...

I am convinced Scott Pruitt will work to protect our natural habitats, reserves, and resources.

His vision for a proper relationship between protection and prosperity makes him superbly qualified to serve as our next EPA administrator.”

(Mike Turpen, Op-Ed, “Pruitt Is a Balanced Selection for EPA Chief,” InsideSources.com, 12/12/2016)

FORMER ARKANSAS ATTORNEY GENERAL DUSTIN McDANIEL (D): “I served as

the Democratic Attorney General of the State of Arkansas from 2007-2015. During that time, I served for three years as the Co-Chair of the Democratic Attorneys

General Association. I am a member of the Democratic National Committee and was a strong supporter of Secretary's Clinton's campaign for President... I believe in the core mission of the Environmental Protection Agency... [General Pruitt] was a staunch defender

of sound science and good policy as appropriate tools to protect the environment of his state. I saw firsthand how General Pruitt was able to bridge political divides and manage multiple agency agendas to reach an outcome that was heralded by most public

observers as both positive and historic.” (Dustin McDaniel, Letter to Sens. Barrasso and Carper, 1/17/2017)

FARMERS & AGRICULTURE LEADERS: ‘Scott Pruitt Is An Ideal Nominee For EPA Administrator’ Who ‘Will ... Ensure That Federal Decisions Are Based On Sound

Science,’ And Will ‘Bring Common Sense And Sanity Back To What Has Become A Lawless Agency’

AMERICAN FARM BUREAU FEDERATION PRESIDENT ZIPPY DUVALL: “The American Farm Bureau Federation strongly supports the nomination of Scott Pruitt as Administrator of the U.S. Environmental Protection Agency (EPA) and urges you

to vote in favor of his confirmation. Scott Pruitt is an ideal nominee for EPA Administrator

for many reasons, but his nomination should command respect from Senators for one reason above all: he has profound respect for the laws written by Congress.”

(Zippy Duvall, President, American Farm Bureau Federation, Letter to Sens. Barrasso and Carper, 1/04/2017)

•

DUVALL: “No one cares more about the responsible stewardship of our land, air, and water than American farmers and ranchers. Our livelihoods depend on it. In recent years, farmers and ranchers have suffered under burdensome,

unnecessary and, too often, unlawful federal regulations promulgated by the EPA.

We desperately need an administrator who understands the challenges our farmers and ranchers face in producing safe, wholesome and affordable food for our nation and the world... Scott Pruitt will put the EPA back on track and ensure that federal decisions

are based on sound science, not politics. He will produce a fair regulatory environment that respects the rule of law. We urge his confirmation.”

(Zippy Duvall, President, American Farm Bureau Federation, Letter to Sens. Barrasso and Carper, 1/04/2017)

OKLAHOMA FARM BUREAU PRESIDENT TOM BUCHANAN:

“I have found Pruitt to be a genuine man filled with integrity. He is quick to listen, and slow to speak. He’s a consensus builder that wants to understand the truth and find middle ground...”

I am confident that Attorney General Pruitt would not only bring common sense and sanity back to what has become a lawless agency, he would restore that agency to its original mission: assisting the states in achieving cleaner air and cleaner water.”

(Tom Buchanan,

Op-Ed, “Guest View: Pruitt Would Be A Friend To Ag Atop EPA,” *The Quad City Times*, 12/16/2016)

NORTH DAKOTA FARM BUREAU PRESIDENT DARYL LIES: “NDFB has vigorously opposed President Obama’s activist EPA, and for good reason. In the last eight years, EPA has repeatedly targeted North Dakota’s economic drivers: agriculture

and energy. That’s why **NDFB supports incoming Environmental Protection Agency Administrator Scott Pruitt. We believe he will work to curb the agency’s overreach and end the regulatory nightmare.**”

(Daryl Lies, “Daryl Lies: North Dakota Farm Bureau Backs Scott Pruitt For EPA Chief,” Say Anything Blog, 1/09/2017)

•

“The nomination of Oklahoma Attorney General Scott Pruitt to serve as Administrator of the Environmental Protection Agency is a welcome reprieve. He will bring a reasoned and balanced approach back to an agency run amok with unnecessary

and flawed regulations which have done more to hurt our environment than help it.

As attorney general, he helped develop robust regulations at the state level to implement economically viable conservation efforts. He reached across the aisle to pass meaningful regulations to protect Oklahoma waters and has aggressively pursued litigation

against polluters. He’s a stalwart defender of the EPA’s mission to protect human health and the environment.”

(Daryl Lies, “Daryl Lies: North Dakota Farm Bureau Backs Scott Pruitt For EPA Chief,” Say Anything Blog, 1/09/2017)

FLORIDA COMMISSIONER OF AGRICULTURE ADAM PUTNAM: “[A]ppointed EPA Administrator Scott Pruitt has the experience, understanding of the law and courage to get this out-of-control federal agency back on track... During [a] joint

congressional hearing of the House and Senate, I witnessed firsthand Pruitt's balanced approach to regulation, one that conserves our natural resources and protects the environment, while also fostering economic growth and, most important, protecting states'

rights. He has a clear understanding where it is appropriate for the EPA to assert a role when it is necessary to protect our natural resources... With Scott Pruitt in charge, we can finally unravel the mess of the EPA, and begin developing and implementing

thoughtful policies that will make measurable improvements to our natural resources and unleash an energy revolution that will bring jobs and higher wages to Americans.”

(Adam Putnam, Op-Ed, “Adam Putnam: Scott Pruitt Will Unravel Mess At EPA,”

Orlando Sentinel, 1/04/2017)

More than 24 Agriculture Associations: “The undersigned agriculture and associated organizations write to urge your support for confirmation of Scott Pruitt to be Administrator of the Environmental Protection Agency (EPA).

Mr. Pruitt has distinguished himself as a thoughtful attorney dedicated to disciplined adherence to the rule of law. Further, he has a reputation for careful consideration of differing perspectives as preparation for taking measured actions.

We respectfully submit that Mr. Pruitt possesses the skills to ensure EPA rules and actions are rooted in law and guided by science.”

(Letter to Sen. Barrasso, 1/17/2017)

•

Among the signatories: American Farm Bureau Federation, American Seed Trade Association, California Specialty Crops Council, Corn Refiners Association, CropLife America, National Association of Wheat Growers, National Cattlemen's

Beef Association, National Cotton Council, National Council of Farmer Cooperatives, National Grain and Feed Association, National Oilseed Processors Association, National Onion Association, National Pork Producers Council, National Potato Council, National

Turkey Federation, National Sorghum Producers, North American Export Grain Association, North American Meat Institute, Northwest Horticultural Council, United Egg Producers, United Fresh Produce Association, U.S. Apple Association, USA Rice, Western Growers

Association

**STATE ENVIRONMENTAL PROTECTION OFFICERS: Pruitt 'Will Seek
To Preserve The Environment In A Responsible Manner That Will Not
Unduly Sacrifice Our Nation's**

Economic Well-Being'

OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION DIRECTOR J.D.

STRONG: "As a fifth generation Oklahoman and someone that has devoted my career to natural resource protection, I take great pride in the progress that has been

made in improving Oklahoma's land, air, water and wildlife resources. For the past six years, General Pruitt has been instrumental in many of our successes and has

never asked me to compromise regulatory efforts to benefit industry. On the contrary, all of our projects and cases that involved his office were given staff support at the highest

level and, more often than not, resulted in more stringent environmental

protections.” (J.D. Strong, Director, Oklahoma Department Of Wildlife Conservation, Letter To Sens. Barrasso And Carper, 1/15/2017; Emphasis In Original)

•

STRONG: “Please do not confuse Pruitt as being anti-environment because of his well justified (and strongly supported by me) efforts to counter the EPA’s various attempts to second-guess or usurp State authority. Rather, he has

been a strong ally in defending our ability to continue the great progress that we’ve made in protecting Oklahoma’s environment at the state level – progress that is too often impeded by Federal overreach and interference.”

(J.D. Strong, Director, Oklahoma Department Of Wildlife Conservation, Letter To Sens. Barrasso And Carper, 1/15/2017)

•

STRONG: “If I were writing [a] headline, it would read, “Pruitt Helps Deliver Water Quality Improvement in Oklahoma’s Scenic Rivers.” At the end of the day, that has been Oklahoma’s goal in the Illinois River watershed for

decades, and that is what is happening during General Pruitt’s term as Attorney General. . . Pruitt helped Oklahoma negotiate a new agreement with the State of Arkansas that prompted not just a study of the appropriate phosphorus level necessary to protect

our shared scenic rivers . . . but more importantly provided for continued phosphorus controls on wastewater and poultry facilities.

For the first time in my career, Oklahoma measured decreasing phosphorus levels and water quality improvement in the Illinois River watershed beginning in 2012. While many people on both sides of the border deserve credit for this result, General Pruitt

definitely was a key player.” (J.D. Strong, Director, Oklahoma Department Of Wildlife Conservation, Letter To Sens. Barrasso And Carper, 1/15/2017)

KENTUCKY SECRETARY OF THE ENVIRONMENT AND ENERGY CABINET
CHARLES G. SNAVELY: “As the Secretary of the Environment and Energy Cabinet for the Commonwealth of Kentucky, I am offering support for the appointment of Attorney General

of Oklahoma E. Scott Pruitt to the position of Administrator of the Environmental Protection Agency (EPA).”

(Charles G. Snavely, Secretary, Environment And Energy Cabinet For The Commonwealth Of Kentucky, Letter To Sens. Barrasso And Carper, 1/17/2017)

•

SNAVELY: “It is our opinion formed from past actions that Attorney General Pruitt will offer a pragmatic, reasonable approach to environmental protection through appropriate regulatory development... Mr. Pruitt’s recognition

of the states’ abilities to carry out the obligations of the Clean Water Act and the Clean Air Act is ... a shared understanding... Ultimately, states will carry the overwhelming burden of implementing and enforcing EPA regulations.

The expertise of state officials should not be ignored and substituted with the opinions of third party interest groups. As a state Attorney General, Mr. Pruitt recognizes the critical role of state environmental agencies.”

(Charles G. Snavely, Secretary, Environment And Energy Cabinet For The Commonwealth Of Kentucky, Letter To Sens. Barrasso And Carper, 1/17/2017)

FORMER SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY DONALD R. VAN DER VAART:

“Pruitt is committed to clean air and clean water, and to restoring EPA to its original mission of enforcing the environmental laws written by Congress.”

(Donald R. Van Der Vaart, Op-Ed, “Scott Pruitt Is The Ideal Nominee To Lead The EPA,” Morning Consult, 12/15/16)

•

VAN DER VAART: “Pruitt understands that a balanced approach to regulation that manages our natural resources and protects the environment can also foster economic growth and protect state and local rights. . . Pruitt will

restore a thoughtful balance to EPA and will seek to preserve the environment in a responsible manner that will not unduly sacrifice our nation’s economic well-being . . .”

(Donald R. Van Der Vaart, Op-Ed, “Scott Pruitt Is The Ideal Nominee To Lead The EPA,” Morning Consult, 12/15/16)

•

VAN DER VAART: “As a state attorney general, Pruitt has seen the real-world consequences of the EPA’s unlawful regulations, and North Carolina was proud to join Oklahoma in taking on tough fights on behalf of states

who are being overrun by federal overreach. . . Pruitt knows the federal agency has an appropriate role in environmental protection but also understands that state governments have demonstrated the ability to implement environmental protections without

destroying the very thing that makes environmental protection possible: a strong economy.”

(Donald R. Van Der Vaart, Op-Ed, “Scott Pruitt Is The Ideal Nominee To Lead The EPA,” Morning Consult, 12/15/16)

JOB CREATORS: ‘Scott Pruitt Will Properly Balance The Need For Environmental Protection With Economic Growth And Other Interests’

US CHAMBER OF COMMERCE: “...as both Attorney General for the State of Oklahoma and as the president’s nominee to head the EPA, Scott Pruitt has demonstrated an appropriate understanding of the proper role of the EPA Administrator

and a commitment to leading the agency in a direction that will protect public health and the environment. We encourage a swift vote on his nomination.”

(Neil L. Bradley, Senior Vice President, U.S. Chamber of Commerce, Letter to Sens. Barrasso and Carper, 1/31/2017)

•

US CHAMBER: “The Chamber has long championed the belief that environmental policy can simultaneously be pro-environment, pro-energy, and pro-economic growth. Unfortunately, in the

past EPA has pursued a regulatory agenda that

has imposed significant economic costs with little environmental benefit.”

(Neil L. Bradley, Senior Vice President, U.S. Chamber of Commerce, Letter to Sens. Barrasso and Carper, 1/31/2017)

Over 70 National And State Manufacturing Organizations: “On behalf of the undersigned organizations,

we strongly urge you to support Scott Pruitt, Attorney General of Oklahoma to serve as Administrator of the U.S. Environmental Protection Agency (EPA). We believe Scott Pruitt will properly balance the need for environmental protection with economic growth

and other interests. Mr. Pruitt also understands that when regulations go too far and fail to adequately balance environmental protection with technological feasibility and impacts to the economy, they cease to be in the best interest of the public.”

(72 Manufacturing Organizations, Email to U.S. Senators, 2/02/2017)

•

“Scott Pruitt is the right person to restore reasonableness to our nation’s environmental laws. As the nation’s leading manufacturing associations, we urge a swift confirmation of Mr. Pruitt for Administrator of the Environmental Protection

Agency.” (72 Manufacturing Organizations, Email to U.S. Senators, 2/02/2017)

State manufacturing signatories: Alaska Chamber, Alliance of Wyoming Manufacturers,

Arizona Chamber of Commerce & Industry, Arizona Manufacturers Council, Colorado Association of Commerce & Industry, Council of Industry of Southeastern

New York, Georgia Association of Manufacturers, Idaho Association of Commerce and Industry, Illinois Manufacturers' Association, Iowa Association of Business and Industry, Louisiana Association of Business and Industry, Maryland Chamber of Commerce, Michigan

Manufacturers Association, Missouri Association of Manufacturers, Nebraska Chamber of Commerce & Industry, Nevada Manufacturers Assn, New Mexico Business Coalition, Pennsylvania Manufacturers' Association, South Carolina Chamber of Commerce, State Chamber

of Oklahoma, Tennessee Chamber of Commerce & Industry, Texas Association of Manufacturers

National manufacturing signatories: Alliance of Automobile Manufacturers, American Bakers Association, American Chemistry Council, American Coatings Association, American Coke and Coal Chemicals Institute, American Forest & Paper

Association, American Foundry Society, American Fuel & Petrochemical Manufacturers, American Home Furnishings Alliance, American Iron and Steel Institute, American Supply Association, Associated Equipment Distributors, Brick Industry Association, Can Manufacturers

Institute, Concrete Reinforcing Steel Institute, Council of Industrial Boiler Owners, CropLife America, Energy Equipment and Infrastructure Alliance, Fabricators and Manufacturers Association, International, The Fertilizer Institute, Flexible Packaging Association,

Glass Packaging Institute (GPI), Global Cold Chain Alliance, GPA Midstream Association, INDA, The Association of the Nonwoven Fabrics Industry, Independent Lubricant Manufacturers Association, International Housewares Association, International Sleep Products

Association, Investment Casting Institute, Kitchen Cabinet Manufacturers Association (KCMA), Metal Powder Industries Federation, Metal Treating Institute, Metals Service Center Institute, NAHAD - The Association for Hose & Accessories Distribution, National

Association of Manufacturers (NAM), National Oilseed Processors Association, National Shooting Sports Foundation, National Stripper Well Association, Natural Gas Supply Association, Natural Gas Vehicles for America (NGV America), Next Generation Manufacturing,

The Plastics Industry Association, Plastics Pipe Institute, Retail Packaging Association, Portland Cement Association, Resilient Floor Covering Institute (RFCI), Treated Wood Council, Truck Trailer Manufacturers Association, Inc., The Vinyl Institute, Wood

Machinery Manufacturers of America

###

SENATE REPUBLICAN COMMUNICATIONS CENTER

202.228.NEWS

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Schnare, David[schnare.david@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
From: Jackson, Ryan
Sent: Fri 3/10/2017 2:21:11 AM

Deliberative Process/Attorney Client Privilege/Ex. 5

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

To: Schnare, David[schnare.david@epa.gov]
From: Connors, Sandra
Sent: Fri 3/3/2017 12:58:27 PM
Subject: Briefings/Background Paper Follow-up from Program Briefings

David – My apologies – this is taking longer to incorporate the materials from yesterday's briefings with OECA/OGC. I will have this to you very shortly.

Sandra

Sandra L. Connors
Senior Advisor

Office of the Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, Room 3317
Washington, DC 20460
(202)564-4231

connors.sandra@epa.gov

To: Schnare, David[schnare.david@epa.gov]
From: Hull, George
Sent: Thur 3/2/2017 6:22:45 PM
Subject: 3:30 pm Meeting

David,

I just had a brief conversation with John Konkus about some updates we wanted to suggest for the EPA Home Page. John thought you should see them. If you are comfortable with my joining the 3:30 meeting, I could bring them to show you. - George

To: Mashburn, John K. EOP/WHO [Personal/Ex. 6]
Cc: matthew.j.flynn [EOP/Ex. 6] matthew.j.flynn [EOP/Ex. 6] Schnare,
David[schnare.david@epa.gov]
From: Benton, Donald
Sent: Fri 3/3/2017 8:53:22 PM
Subject: FW: Point of Obligation Stories

John,

As discussed, it is critical that [Deliberative Process Privilege/Ex. 5]

[Deliberative Process Privilege/Ex. 5]

Also, below are the clips on the point of obligation stories. Highlighted sections are pertinent.

[Deliberative Process Privilege/Ex. 5]

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



Biofuels Association Head Says Trump Administration Will Shift Responsibility For Fuel Blending.

Bloomberg News (2/28, Blewitt) reports the Trump Administration denied that it was considering a proposal to change biofuel blending rules, reversing refiners' stock gains that follows earlier reporting that a deal had been struck between refiner and investor Carl Icahn and the Renewable Fuels Association. The White House said there was no deal. "I was told in no uncertain terms that the point of obligation was going to be moved, and I said I wanted to see one of our top agenda items moved," Bob Dinneen, head of the Renewable Fuels Association, said in a phone interview Monday. Reuters (2/28) reports Dinneen said Tuesday that his organization has been told by the White House that the Administration "would lift the responsibility for fuel blending off refiners, which had long requested this change to the nation's biofuel program," saying that it "hits them with burdensome costs." The

responsibility will now fall “to position holders at the terminal.” However, White House spokeswoman Kelly Love said on Tuesday afternoon “there is no ethanol executive order in the works.”

In a second story, Bloomberg News (2/28, Dlouhy, Parker) reports the parties presented the White House with a memorandum containing draft language it could use to direct the EPA to make the adjustments. According to sources, the memorandum could be issued sometime soon.

Icahn’s Share In CVR Energy Surges Amid News Of Possible Biofuel Deal. Bloomberg Business (2/28, Dlouhy, Natter, Allison) reports that Carl Icahn’s 82 percent stake in the refiner CVR Energy Inc. grew by nearly \$126 million on Tuesday on news of a proposed deal to alter the US renewable-fuels program, which was brokered in part by Icahn himself as special advisor to the president. Responding to criticism of Icahn’s role in the policy debate, Deputy Press Secretary Lindsay Walters said, “I can’t speak to the particular issue in that article, but the only criteria the president uses to make policy decisions is what is in the best interests of the American people.”

To: Schnare, David[schnare.david@epa.gov]
From: Brooks, Phillip
Sent: Thur 3/2/2017 6:15:18 PM
Subject: VW
[VW Settlement Overview 02.10.2017.pdf](#)

FYI here is the internal briefing slides we recently prepared that provide a good overview of this matter. Please note that this document is EPA internal only.

To: Weekly Report Group[Weekly_Report_Group@epa.gov]
Cc: Packard, Elise[Packard.Elise@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Hautamaki, Jared[Hautamaki.Jared@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Minoli, Kevin
Sent: Fri 3/10/2017 2:16:36 AM
Subject: OGC Weekly Report - Redacted for Recusals

OGC Weekly Report

Upcoming Hot Issues and Deadlines

3/15 Filing regarding structure of oral argument & deadline to seek postponement of argument scheduled for 4/19 due in *Murray Energy Corp v. EPA* regarding the ozone NAAQS.

Upcoming Public Meeting

3/10 The Acting General Counsel will participate in a call of the ECOS Legal Network.

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Office Line: 202-564-8040

Direct Dial: 202-564-5551

To: Schnare, David[schnare.david@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Konkus, John[konkus.john@epa.gov]; Benton, Donald[benton.donald@epa.gov]
From: Woodward, Cheryl
Sent: Fri 3/3/2017 12:29:01 PM
Subject: RE: 8:00 meeting

Okay I won't deliver the calendars. But they are at my desk printed!

-----Original Message-----

From: Schnare, David
Sent: Friday, March 03, 2017 7:27 AM
To: Woodward, Cheryl <Woodward.Cheryl@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Benton, Donald <benton.donald@epa.gov>
Subject: RE: 8:00 meeting

Ryan cancelled the 8 am meeting today.

-----Original Message-----

From: Woodward, Cheryl
Sent: Friday, March 3, 2017 7:26 AM
To: Hale, Michelle <hale.michelle@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Benton, Donald <benton.donald@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: RE: 8:00 meeting

Calendars printed for Mr. Jackson 8:00 am meeting and will take to his office

-----Original Message-----

From: Hale, Michelle
Sent: Friday, March 03, 2017 6:18 AM
To: Woodward, Cheryl <Woodward.Cheryl@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Konkus, John <konkus.john@epa.gov>; Benton, Donald <benton.donald@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: 8:00 meeting

Reminder that the meeting at 8 needs to be held somewhere besides the Admin Office.

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
Cc: Benton, Donald[benton.donald@epa.gov]; Reeder, John[Reeder.John@epa.gov]
From: Davis, Patrick
Sent: Tue 2/21/2017 9:47:37 PM
Subject: RE: intel briefing for Administrator Pruitt

Thank you.

From: Schnare, David
Sent: Tuesday, February 21, 2017 4:45 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Cc: Benton, Donald <benton.donald@epa.gov>; Reeder, John <Reeder.John@epa.gov>
Subject: Re: intel briefing for Administrator Pruitt

Check with John Reeder

Sent from my iPhone

On Feb 21, 2017, at 4:43 PM, Davis, Patrick <davis.patrick@epa.gov> wrote:

Dave and Don,

Dave Kling asked me today when the intel briefing for Administrator Pruitt and the chief of staff will be scheduled. Do you know?

Thanks,
Patrick Davis

To: Schnare, David[schnare.david@epa.gov]; Middleton, Brandon (ENRD)[Brandon.Middleton@usdoj.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Fugh, Justina[Fugh.Justina@epa.gov]
From: Minoli, Kevin
Sent: Fri 3/3/2017 8:46:11 PM
Subject: RE: CPP litigation

Attorney-Client/Ex. 5/ Deliberative Process Ex. 5

protection for the employee. I would be happy to discuss by phone if you have questions or concerns.

Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Minoli, Kevin
Sent: Friday, March 03, 2017 12:41 PM
To: Schnare, David <schnare.david@epa.gov>; Middleton, Brandon (ENRD) <Brandon.Middleton@usdoj.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Fugh, Justina (Fugh.Justina@epa.gov) <Fugh.Justina@epa.gov>
Subject: RE: CPP litigation

Hi David- I want to inform you that we received an inquiry from the Department of Justice regarding whether your recusal obligations related to CPP litigation applied to this action.

Attorney-Client/Ex. 5/ Deliberative Process Ex. 5

Thanks, Kevin

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Schnare, David
Sent: Wednesday, March 01, 2017 5:23 PM
To: Middleton, Brandon (ENRD) <Brandon.Middleton@usdoj.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>

Subject: CPP litigation

Attorney-Client/Ex. 5/ Deliberative Process Ex. 5

dschnare

To: Schnare, David[schnare.david@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Konkus, John[konkus.john@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/7/2017 8:11:52 PM
Subject: 4pm

We'll be back at 4. We need the schedule for tomorrow and the remainder of the week with notes for tomorrow and CERA. Nice job, john, with the entirely appropriate F Scott Fitzgerald theme. I can see him using that in future remarks too.

I'm going to meet with our budget team and take care of some personnel so you guys can talk to him about your plans.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

To: Schnare, David[schnare.david@epa.gov]
From: Benton, Donald
Sent: Fri 3/3/2017 8:35:23 PM
Subject: FW: Contact info for Catanzaro

Number for Catanzaro

Mike's contact: Personal Phone/Ex. 6

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



To: Schnare, David[schnare.david@epa.gov]
From: DWSschnare
Sent: Thur 1/26/2017 11:29:28 PM
Subject: Fwd: Thread on Pruitt testimony on warming

Sent from my iPad

Begin forwarded message:

From: "John Dunn" [Personal Email/Ex. 6]
Date: January 26, 2017 at 3:33:28 PM EST
To: "steve milloy" [Personal Email/Ex. 6], "Richard Farina" [Personal Email/Ex. 6] "david schnare" [Personal Email/Ex. 6] "Myron Ebell" <MEbell@cei.org>, "joe BAST" <jbast@heartland.org>, "james taylor" [Personal Email/Ex. 6] "H. Sterling Burnett" <HBurnett@heartland.org>
Subject: Thread on Pruitt testimony on warming

Subject: Trump: Pruitt questions warming

EPA administrator nominee Scott Pruitt yesterday sent 242 pages of responses to questions from Democratic senators, doubling down on his stances that the severity of climate change is up for debate and that the agency he would run has overstepped its congressional mandate.

In response to numerous general and specific questions about climate science, the Republican Oklahoma attorney general pasted the same response:

"The climate is changing and human activity impacts our changing climate in some manner. The ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue," he said, echoing his comments from a hearing last week with the Senate Environment and Public Works Committee.

The EPA nominee said he would "work to ensure that any regulatory actions are based on the most up to date and objective scientific data, including the ever-evolving understanding of the impact increasing greenhouse gases have on our changing climate."

Pruitt agreed he would not retaliate against EPA employees who work on climate change issues. He said repeatedly that it would be his privilege to work with scientists and other public servants and added that he would "follow applicable laws and federal guidance on scientific integrity, information quality, and transparency." His responses landed in inboxes last night as the Associated Press reported that the Trump administration intends to require scientific reports from EPA to get final signoff by political appointees.

Pruitt also weighed in on an international deal to curb climate change, which President Trump has said he will exit. Pruitt said that if the State Department

decides to continue to participate in the Paris Agreement, he would "work with all involved agencies to ensure that commitments made on behalf of the United States are achievable and consistent with requisite legal authorities delegated by Congress."

For many questions about how he would handle certain policies and enforcement issues, he stated broadly that he would carry out authorities granted to EPA by Congress, without explaining how. Delaware Sen. Tom Carper, the ranking Democrat on the committee, called Pruitt's answers "shockingly devoid of substance." Committee leaders have not yet agreed on a date to vote on confirming the nomination.

"I also believe the Administrator has an important role when it comes to the regulation of carbon dioxide," Pruitt wrote, saying he would follow the agency's endangerment finding that CO₂ is a pollutant that is harmful to public health. He said he would do that "respective of the applicable statutory framework established by Congress."

Sent: Thursday, January 26, 2017 9:20 AM
Subject: Re: Trump: Pruitt questions warming

Dunn says:

unless he is intentionally deceitful, Mr. Pruitt is enormously ignorant of the problem with the EPA.

He says he will be respectful of the endangerment finding????

He, like so many other nominees, accepts the bullshit about warming that is anthropogenic, and catastrophic?

does he also accept the pile of epidemiological papers that make small associations on air pollutions effects into major public health scaremongering—like claims that small particles kill almost as many people in America annually as cancer?

this all starts with the nature of lawyers, my friends, lawyers who have never even cracked the book *Reference Manual on Scientific Evidence* published by the Federal Judicial Center and written by a cadre of science experts on multiple subjects that pertain to admissibility of evidence under the Federal Rules of Evidence 701 et seq.

link to the reference manual

http://www.fjc.gov/public/home.nsf/autoframe?openagent&url_l=/public/home.nsf/inavgeneral?open

there is a group of lawyers who know the Daubert v Merrill Dow Case and the jurisprudence related to admissibility of scientific evidence, that's tort and products

plaintiff and defense lawyers—because scientific testimony and evidence is critical to their cases and Federal Jurisprudence as well as the State Jurisprudence that derives from the Federal makes admissibility challenges a vital part of litigation related to personal injury and products liability.

In fact I would bet that very few of you, not being lawyers, own or have read the book in any of its three editions, 1995, 2000, and 2011.

If you were to give testimony in court it might govern the conduct of the judge who is designated as gatekeeper for admissibility of evidence and testimony.

the Daubert v Merrill Dow case of 1993 went to the Supreme Court on appeal regarding scientific testimony admissibility disputes on a drug for nausea in pregnancy called Bendectin, that was very popular and very effective. I am old enough to have used it for a long time. Claim was it caused Birth Defects, trial court denied plaintiff's experts testimony, finally the SCOTUS, in an opinion by Blackmun who fancied himself knowledgeable in these things as former general Counsel to the Mayo Clinic, laid out the rules for admissibility—common sense rules that govern admissibility decisions till today. Merrill Dow won their case eventually tried by the court that threw out the experts, but the company withdrew Bendectin from the market because the litigation risk was considered to be a continued problem, just like Dow Corning caved to the bullshit breast implants litigation industry and they were eventually proven wrong by the same FDA that put a hold on silicone implants. Now you can get a silicone implant, and they are better than the saline ones but there is a new junk tox attack on another plastic component BPA, also proven safe for decades. Scaremongering is easy—just say it enough times, and the neurotics/media/scammers will make it happen.

Daubert opinion is here:

<https://www.law.cornell.edu/supct/html/92-102.ZS.html>

Problem is that I can never find a way to get opponents of the EPA to get the admissibility of EPA science in dispute, which has to happen at the trial court level and has been one of the big reasons that the administrative/agency run state has gone rogue and overreached with junk science. Long story, but the Courts have expanded the concept of deference to agency actions to the ridiculous point and have refused to properly apply the Administrative Procedure act to stop arbitrary and capricious junk science based agency actions.

the reason I am irritated with lawyers like Pruitt is they are afraid to wade in and fight the science battle—preferring to argue process and economics issues. LOOOOOOSER. When the EPA claims they are saving lives, thousands, hundreds of thousands of lives, based on their bullshit science, the courts accept their claims—the high priced lawyers lose again.

Get why I am so frustrated? Why Priutt's responses need to have a scientific review as

being concessions on junk science claims about climate and more than that, all of the EPAs regulatory actions on air, water, species are based on junk science that is the product of political agendas, enviro advocacy and dishonest use of epidemiology and toxicology. Linear no threshold tox is junk, small associations epi is junk, but the courts allow it under the *Chevron* deference rule

https://en.wikipedia.org/wiki/Chevron_U.S.A.,_Inc._v._Natural_Resources_Defense_Council,_Inc.

Lawyers like Pruitt and Greg Abbott, who challenge as AGs or representing industry and business concerns will continue to lose politically and legally until they prepare and plan and challenge the junk science. Get any sense that Pruitt knows the science debate? Greg Abbott didn't, I pounded on his guy Weber who was heading up the EPA lawsuits—no response, no interest—this is years ago. Still can't get any attention to the strategies necessary—they just pull out the same old arguments and lose again. And the EPA laughs at em--

But the wind just shifted. The Trump administration gets the advantage and Chevron will play out for Trump administration agency decisions, but we should revive the Data Quality Act (Randy says it's the Information Quality Act, 2000) and we need to get smart about making it impact all science/policy decision making now and in the future.

That's why, until Trump (Bushes were both just as bad as the Dems) we had no chance—all your elegant talk about the climate and GHG effects and the records of sea level meant nothing, because the enviros were in charge, in control.

Everybody was so pleased with the quality of scientific challenge on endangerment—did it do any good—not as long as it's in a court that defers to agency science and refuses to make evidentiary decisions guided by Daubert jurisprudence, the way it is dealt with in regular litigation if the judge is doing his or her job. Regulatory challenges are on a different track that puts us at a disadvantage because of *Chevron* deference. Remember that.

Did you know you can get it free on line, the whole book. Download it for free or just look at it and download chapters that pertain to your work or the science issues. Written by the elite of experts, no hacks were engaged—and the editions got better and better.

The first two were published by a legal pub house in Minneapolis, the 3rd latest edition is available from the National Academies Press in a hard back about 1000 pages, or on line.

John,

Thanks for the references. Yes that third edition is downloadable (~1024 pages, 14.7 mbytes) and therefore searchable.

Perhaps the best thing that could happen, though risky, is to stop the sue-and-settle approach and force all the sue'ers to actually go to court and litigate. That takes

lots of time and money, especially if appeals go on and on. The so-called science arguments will have to play out in the open rather than behind closed doors. I suspect venue choices will play a role and we need to avoid the 9th district..

Jack K

Subject: Re: Trump: Pruitt questions warming

Jack,

The answer to that suggestion is no—sue and settle collusive suits were effective in pushing more regs not because they suggested new junk science, but because they gave the EPA an opportunity to agree to follow the junk science and do more regulating. The sue and settle suits were not about new scientific junk “evidence” but about pushing the EPA to do more based on the EPA’s own evidence. They were dragged kicking and screaming (and secretly smiling) to regulate more, to reach farther.

Again, I emphasize courts that use the Chevron deference as their standard for assessing agency conduct are the problem so you have to go in with a different agency position or opinion to get a favorable ruling.

Now we are in the position that the EPA was in for 3 decades. they put up science, opinions and make policy positions and then they just get to brush aside any objections in courts that allow the Chevron deference to prevent any review of agency action under the arbitrary and capricious standard of the Administrative Procedure Act.

The place to force the evidentiary decision is the trial court, and in these cases that have gone before the appellate court there has never, to my recollection, been a successful appeal to the appellate court to rule on the trial court’s evidentiary decisions based on deference.

That’s why the appellate court judges looked over their glasses at the industry and state lawyers and said, to paraphrase—you aren’t going to talk to us about scientific disagreements are you?

Now do you get my point—courts are unfriendly to a fault with agencies on the march.

John Dale Dunn MD JD
Civilian Faculty Emergency Medicine
Carl R Darnall Army Medical Center
Fort Hood, Texas
401 Rocky Hill Road

Brownwood, TX 76801

Ex. 6

To: Schnare, David[schnare.david@epa.gov]
From: DWSschnare
Sent: Fri 3/3/2017 11:44:56 AM
Subject: [WARNING: DKIM validation failed]
Trump Enviro Law Program Description 2.2.17.PDF

Sent from my iPad



ENERGY
BAR ASSOCIATION®

EBA Program Description Form

**Must be completed and sent with calendar request to
Marlo Brown-Carpenter at EBA.**

marlo@eba-net.org

Name/Contact of Volunteer Coordinator:

Jay Morrison, Justin Savage. Rsvps to

Personal Email/Ex. 6

Title of program*: The Future of Environmental Law Under the Trump Administration

**Please keep the title pithy.*

Type of program: ☐ Luncheon ☐ Reception ☐ ✓ Teleconference ☐ Webcast ☐ All -Day Program

☐ Other, Describe: Webinar followed by a reception for those who participate at the site

Date: March 13 2017 Time-Start/End: 5:30 - 7:30 (ET)

Location: Hogan Lovells, 555 Thirteenth Street, NW, Washington, D.C.

[Include Host firm's name and room capacity (for internal use only)]

CLE Credit: Do you anticipate requesting CLE for this program:

☐ Yes, I would like EBA to apply for CLE (indicate which states: _____)

☒ No CLE

☐ I would like help evaluating if this program is worthy of CLE

Recording Program: EBA encourages committees and chapters to conduct programs that are worthy of recording and selling post meeting. In general, this means the program has a shelf life, and is of interest to a large audience. Generally programs that are selected for recording are also approved for CLE credits. *To record a program requires significant expense to EBA and will require a more planning time (up to 8 weeks) for the speakers.*

☐ Yes, I would like EBA to consider recording this program

☒ No this program is not worthy of recording.

Brief Description of program to use in promotional e-mails/materials:

~~Please join our distinguished panel to discuss the future of environmental law under President Trump, with a~~
~~particular emphasis on the energy sector.~~

Presented by which EBA Committee(s) or Chapter:

~~EBA Environmental Regulation Committee~~

Co-Marketing: Would you like EBA to invite other bar associations or industry organizations to co-market this program to their membership? If so, which organizations? (Please note, all invitations to co-market programs must be approved by the EBA Joint Enterprise Committee):

~~ABA Environmental Enforcement and Crimes Committee; ABA Infrastructure and Regulated Industries Section; D.C. Bar Environment, Energy and Natural Resources Section~~

Please list the program moderator and speakers. Include Name, Title, Organization or Company for each speaker/moderator:

Moderator:

Justin Savage, Partner, Hogan Lovells

Panelists:

Richard Alonso, Partner, Bracewell

Matt Kellogg, Senior Policy Advisor and Counsel, House Majority Leader Kevin McCarthy

Dr. David Schnare, Esq., Ph.D, EPA Transition Team and Landing Team

PLEASE NOTE: the EBA generally does not provide travel reimbursement for speakers or pay speaker fees.

Other Meeting Specifics:

☒ Meeting has financial sponsors (include list of sponsors)

Hogan Lovells

☐ Program includes a hosted lunch, paid for by: _____

☒ Program includes a hosted Networking reception immediately following the meeting, paid for by: Hogan Lovells

Location Details: Provide specific details regarding parking, Metro, access to the location:

555 Thirteenth Street, NW, Washington DC, directly above Metro Center

Media: Is there any reason the media cannot attend this event? YES NO If yes, please describe: Yes, the media should not attend. We want the speakers to feel comfortable.

Questions for the Panelists:

[Optional] If you would like people to ask questions in advance, complete this info:

Please send any questions for the panelists to

[Name] _____ at [email address] _____ [no later than _____]

EBA staff will insert registration rates, payment and cancellation details into the marketing material.

As a reminder, the EBA Board has approved the following Program Fee Guidelines:

The EBA Board has adopted a minimum fee structure for EBA events organized at both the national and chapter levels. The fee structures do not apply to either National or Chapter annual meetings. Those excluded events shall continue to be priced individually with prior approval from the EBA Board. Also, lower fees can be proposed for current students and government employees.

RETURN COMPLETED FORM TO MARLO BROWN-CARPENTER AT MARLO@EBA-NET.ORG

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]; Kenny, Shannon[Kenny.Shannon@epa.gov]; Reeder, John[Reeder.John@epa.gov]; Schnare, David[schnare.david@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Anderson, Denise[anderson.denise@epa.gov]; Dickerson, Aaron[dickerson.aaron@epa.gov]; Connors, Sandra[Connors.Sandra@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/7/2017 7:55:37 PM
Subject: Re: List of Requested Briefings

We are simply looking for paper initially. If he would like a staff briefing we can schedule that. I'm sorry for not making that more clear. The briefings already prepared in a number of issues like the point of obligation, chry... pesticide, gold king, and flint have been very digestible and ether takes care of the issue for the moment or has informed discussions about it he has had with members of Congress or other cabinet secretaries. I believe it's been going well.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

On Mar 7, 2017, at 2:25 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Mike,

For what it's worth my view is that as the Administrator's time has been extremely limited as of late, that the program office briefings would take place at the staff level (to Byron, Schnare, Ryan Jackson and me) and then that core group would present policy options to the Administrator on key issues based upon those program briefings. I realize that is less than ideal, but on some of these more timely issues with hard deadlines, I think finding the time for a longer briefing with Administrator Pruitt will be challenging (though not impossible).

That said, I really defer to Ryan how to proceed on this and I've offered my insight as to what issues are most pressing and need attention one way or the other.

Best,

Samantha

From: Flynn, Mike

Sent: Tuesday, March 7, 2017 12:11 PM

To: Dravis, Samantha <dravis.samantha@epa.gov>; Kenny, Shannon <Kenny.Shannon@epa.gov>

Cc: Reeder, John <Reeder.John@epa.gov>; Schnare, David <schnare.david@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>; Anderson, Denise <anderson.denise@epa.gov>; Dickerson, Aaron <dickerson.aaron@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>

Subject: List of Requested Briefings

Hi Samantha,

As you know, there are numerous briefings for the Administrator that have been requested by the program offices, that Ryan has asked to set up, or may have been mentioned in the program office briefings for the Administrator (a couple of which you attended). To help Ryan and the scheduling team, I had folks put together a list of the requested briefings (attached). The first group are the ones that seem to be the most urgent. We've gone over this with Michelle and wanted to get your and your team's input before sharing with Ryan. I'd like to share with Ryan later today so he can confirm which meetings he would like to be scheduled with the Administrator in the short term.

This is just to jump start getting key meetings on the calendar for the Administrator. I realize more discussions with Ryan will be needed going forward to make sure we have a smooth process with everyone involved who needs to be.

Thanks for your help.

Mike

Mike Flynn

Acting Deputy Administrator

U.S. Environmental Protection Agency

202-564-4711

To: Schnare, David[schnare.david@epa.gov]
From: John Hall
Sent: Fri 3/3/2017 8:35:04 PM
Subject: RE: Meeting request to discuss EPA support for peer reviews

David

We have been trying to get through on the phones to set this up which is difficult. Can you suggest an email contact that could assist us?

Thanks

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Friday, March 03, 2017 11:08 AM

To: John Hall

Subject: RE: Meeting request to discuss EPA support for peer reviews

probably

From: John Hall [<mailto:jhall@hall-associates.com>]

Sent: Friday, March 3, 2017 11:07 AM

To: Schnare, David <schnare.david@epa.gov>

Subject: RE: Meeting request to discuss EPA support for peer reviews

David

That is good to know. Of course, if OW makes the call, the answer will be no – like before. Anything else would be an admission that something might be awry with their prior decision making.

Do you believe that a client/Congressional rep meeting with Administrator Pruitt is needed to make something positive happen?

Thanks

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: Schnare, David [<mailto:schnare.david@epa.gov>]
Sent: Friday, March 03, 2017 10:57 AM
To: John Hall
Subject: RE: Meeting request to discuss EPA support for peer reviews

Our folks are tracking your requests and I am monitoring them.

d.

From: John Hall [<mailto:jhall@hall-associates.com>]
Sent: Friday, March 3, 2017 10:45 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Meeting request to discuss EPA support for peer reviews

David

As you know several requests have been submitted to address major EPA actions in PA, MA and MN that were based on junk science – or no science at all.

We believe that the best way to resolve the science issues is for the new administration to support the request for peer review (which the prior administration turned down for both Taunton and the PA TMDLs).

Please let me know if you have time to discuss whether EPA will support the request.

PS – Here is a Letter to the Editor CRR submitted to the Post on EPA's scientific abuses – of course it wasn't printed.

John

John C. Hall

Executive Director

Center for Regulatory Reasonableness

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: John Hall

Sent: Friday, February 10, 2017 12:10 PM

To: 'Schnare, David'

Subject: RE: Various Junk Science/Illegal Rulemaking Projects Soon to Land on Your Doorstep (can we chat when you have a few minutes)

David

I'm still working on your timeline request re: the other bad science projects I mentioned. The following cases are presently pending before various federal courts. Letters are being submitted to Administrator Pruitt asking for the matters to be placed in abeyance and EPA's position reconsidered:

Challenge to EPA Blending/Bacteria Mixing Zone Ban (CRR v. EPA – DC Cir): EPA ignored 8th Cir *ILOC v. EPA* ruling vacating the illegal/ultra vires NPDES rule modifications and re-imposed them in Nov. 2013. Nationwide cost several hundred billion for blending ban, even greater cost for bacteria mixing zone ban (basically means zero CSO discharge and disinfection of all stormwater discharges). Case pending decision. **Request:** Because briefing is completed, clarify to Court EPA decision to continue imposition of NPDES permitting prohibitions vacated in *ILOC v. EPA*, outside of the 8th Circuit.

Challenge to EPA Permit Action imposing State of the Art Nutrient Limits with No Site-Specific Water Quality Impacts Analyses (City of Taunton v. EPA – 1st Cir.): EPA declared entire Taunton estuary nutrient impaired and created new procedure to claim state of the art TN limits were required (aka “Sentinel Method”); Three top experts stated EPA analysis/Sentinel Method was grossly flawed - EPA HQ agreed new method had never undergone peer review or been demonstrated to be scientifically defensible. Nonetheless, EPA HQ refused to conduct peer review of new method, in violation of Peer Review Handbook governing use of new procedures to be used in regulatory setting. EPA/EAB claimed further technical justification was unnecessary because requirements may be imposed without any “cause and effect” demonstration – which basically re-writes CWA to allow EPA to impose stringent limits without site-specific demonstration of need. Opening briefs April 1, 2017. **Status:** Letter to be submitted from affected Cities shortly asking for matter to be moved to ADR process.

Challenge to Approval of MN Stream Nutrient Criteria with Unprecedented Nutrient Impairment Criteria (CRR. V EPA - DC Dist Ct): EPA promoted MN adoption of unprecedented nutrient impairment indicators (BOD and DO flux) and then approved them, even though EPA knew these parameters do not actually cause “impairment” and numerous non-nutrient factors affect them. EPA's action will result in classifying many additional waters nutrient impaired, when they are not. Nation's (and EPA's) leading expert on proper BOD test usage, *Standard Methods*, informed EPA using the test to predict nutrient impairment was improper – EPA also ignored the finding of this independent expert group. Parties filing motions

on administrative record. **Status:** Letter seeking reconsideration to be submitted next week. Expect contact from Congressional Representatives in support of action/reconsideration.

Challenge to NH MS4 permit (Filing on EPA NH action pending; Existing challenge to MA MS4 permit in DC Cir.): EPA radically modified MS4 permit, creating new mandates nowhere found in federal law or regulation and changing basic burden of proof for setting more restrictive requirements under CWA (presume causing impairment unless permittee proves otherwise); EPA action created federal review authority over all local land use permitting decisions – which is unprecedented overreach. NH Gov. Sununu expected to contact Administration for withdrawal of permit. Parties to meet thereafter. **Status:** Request for withdrawal of EPA MS4 permit already under consideration – ADR process likely avenue for relief.

Challenge to PA Nutrient TMDLs Using Junk Science to Impose Unattainable Reduction Mandates(Telford Boro et al v. EPA, ED PA): EPA created stringent nutrient limits for all of Eastern Pennsylvania using methods EPA’s Science Advisory Board stated were not scientifically defensible. The water quality limits EPA created are exceeded in natural background waters in Eastern PA and would require “pre-European” conditions (i.e., reforestation of entire watershed and removal of all human influences) to meet mandated nutrient load reduction requirements. Methods used to devise similar limits in nearby Wissahickon watershed also violate the laws of physics and nature (settling of dissolved substances, and plant growth occurring in the dead of winter and during major storm event when plant growth does not physically occur). EPA also rejected all field studies and peer reviewed literature confirming that plant growth would not be controlled with the proposed nutrient reduction program. **Status:** The Eastern PA communities and municipal trade assn’s will be meeting in end of February to coordinate Congressional assistance on seeking peer review of EPA’s arbitrary mandates. Letter to EPA expected in early March as well as Congressional inquiry.

PS – EPA recently proposed new blue-green algae “toxin” standards to create a basis for regulating phosphorus nationwide to extremely low levels. The analysis is so grossly incorrect and impacts on human health so clearly fabricated, it is embarrassing. Comments on this latest EPA masterpiece are due Feb 17, 2017.

-

Clearly, the New Administration has its hands full.

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: Schnare, David [<mailto:schnare.david@epa.gov>]

Sent: Thursday, January 26, 2017 6:05 PM

To: John Hall

Subject: RE: CRR Letter to New Administration - Request to Immediately Freeze NH Stormwater General Permit Issued by EPA January 18, 2017

John:

Can you send me a timeline and examples of the less than credible science R1 has been using, and that OW has approved. I need context and specifics to approach this issue. It would be very helpful if you cast that briefing in the context of EPA's Information Quality Act guidance. That is the tool I want to see used to pull the agency back into the mainstream.

d.

To: Schnare, David[schnare.david@epa.gov]
From: Jackson, Ryan
Sent: Fri 3/10/2017 2:04:09 AM
Subject: RE:

Thanks. Pruitt believes Konkus told him that. I can't imagine that's true.

-----Original Message-----

From: Schnare, David
Sent: Thursday, March 9, 2017 9:03 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Re:

I just spoke with Loren Smith. He is checking with the close advisors to the Secretary. He knows of no back off but will check tonight. He made it clear that they take their marching orders from the WH, so if the WH wants to do this , they are on board. He will have an update first thing tomorrow.

d

Sent from my iPhone

> On Mar 9, 2017, at 8:30 PM, Schnare, David <schnare.david@epa.gov> wrote:
>
> No. Just the opposite. I'll check again.
>
> Sent from my iPhone
>
>> On Mar 9, 2017, at 8:26 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:
>>
>> Are you hearing that DOT doesn't want to do this?
>>
>> Ryan Jackson
>> Chief of Staff
>> U.S. EPA
>> (202) 564-6999

To: Schnare, David[schnare.david@epa.gov]
From: Rees, Sarah
Sent: Thur 3/2/2017 5:24:56 PM
Subject: Re: 114 Notice - Tic Tic Tic

We have it and it will go on time.

On Mar 2, 2017, at 12:23 PM, Schnare, David <schnare.david@epa.gov> wrote:

To: Benton, Donald[benton.donald@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]
From: Jackson, Ryan
Sent: Tue 3/7/2017 7:51:51 PM
Subject: Re: Arrival Details- Tomorrow's Infrastructure: The Road Ahead

What is the format for this event?

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

On Mar 7, 2017, at 2:49 PM, Benton, Donald <benton.donald@epa.gov> wrote:

Gentleman,

I will be attending the Infrastructure summit at the Washington Post tomorrow morning and unable to attend our daily staff meeting.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Thanks,

Don

Thank you for registering to attend Infrastructure: The Road Ahead **tomorrow morning** at The Washington Post.

Guest check-in will be located in the West Tower at 1301 K Street NW. Doors open at **8:30 a.m.** for breakfast.

The Washington Post
1301 K Street NW
Washington, DC 20071

Wednesday, March 8
Doors open for breakfast: 8:30 a.m.
Program: 9:00 - 10:30 a.m.

Metro

McPherson Square is the closet metro stop via the blue, orange and silver lines. Take the exit toward 14th and I Streets. The Washington Post is one block north and to your right on K Street.

Security

Please bring a photo ID. All bags will be searched prior to entry.

*Infrastructure: The Road Ahead is presented by Mitsubishi Heavy Industries Group with support from
Georgetown University McDonough School of Business.*

[Unsubscribe](#)

<image001.jpg>

To: Schnare, David[schnare.david@epa.gov]
From: Smith, Loren (OST)
Sent: Fri 3/3/2017 8:14:26 PM
Subject: Re: CAFE discussion draft: joint DOT-EPA notice

Thanks Dave!

Sent from my iPhone

On Mar 3, 2017, at 3:04 PM, Schnare, David <schnare.david@epa.gov> wrote:

Attached is our final edit on the Notice. Send back the final final when you are done with it so we can get it signed.

I've highlighted the last para as that is a placeholder for you folks and just wanted to be sure it got addressed.

Best regard for the weekend.

David Schnare

<CAFE-FR-notice-joint-DOT-EPA notice EPA Final Edits.DOCX>

To: Schnare, David[schnare.david@epa.gov]
From: Randall, Brenda
Sent: Thur 3/2/2017 4:36:11 PM
Subject: Transit/Parking Assistance

Hello David,

Can you please give me a call at your earliest convenience to discuss your transit/parking options. Thanks, Brenda

Very Respectfully,

Brenda R. Randall

Facilities Management & Services Division

Headquarters Services Branch

(Office) 202-564-4518

“Everyday is a day of new Mercy, we should treat it as if it’s our last”

To: Schnare, David[schnare.david@epa.gov]
From: Kaplan, Robert
Sent: Fri 3/3/2017 3:33:24 AM
Subject: Re: Eramet Marietta: call follow up

Dave,

You asked me to prepare a write-up on Eramet, and specifically asked if it saved jobs (email below). Today we sent to Ohio the last step necessary to delegate authority from EPA to the state. Upon delegation, the state will take action to provide the company more time to comply, preserving the jobs that had been at risk. We will feature this in the "Weekly Update" when complete. Until then, please see summary and background below. It's a good result -- it puts the state in the lead for implementation, levels the playing field between US producers in different states, achieves compliance within a reasonable time, and protects jobs.

Summary: Eramet Marietta, Inc. is one of only two producers of ferromanganese alloys subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ferroalloys Production, 40 C.F.R. Part 63, Subpart XXX. The company expressed concern with its ability to timely meet the rule's June 30, 2017 compliance date. The Attorney General of Ohio in a letter to EPA that 90 jobs were at risk. EPA worked closely with the State of Ohio and found a creative solution that provides maximum flexibility to the company and to Ohio. By delegating Subpart XXX to Ohio, EPA is hopeful that this solution preserves the jobs at risk by allowing the company additional time to come into compliance. Eramet sought repeal of the rule. However, we feel that providing reasonable time to comply so that both US producers are on a level playing field is a reasonable compromise solution.

Background: Eramet has signaled to EPA its commitment to comply with Subpart XXX, and has already taken significant steps at the larger of its furnaces to do so. Eramet needs additional time to secure funding from its parent corporation to install the required control technology at its second furnace. After the Ohio Attorney General recently called attention to Eramet's inability to achieve full compliance by the approaching deadline, Bob Kaplan, Region 5's Acting Regional Administrator, and Craig Butler, the Director of Ohio EPA, jointly agreed that delegation of the NESHAP was the best possible solution. They agreed that Ohio EPA would take the lead in working with Eramet on next steps. Region 5 and the State of Ohio have an existing Memorandum of Agreement that provides for expeditious delegation of this rule.

-- Bob

Acting Regional Administrator
Environmental Protection Agency
Region 5

Cell: (312) 515-9827

Office: (312) 886-1499

From: Kaplan, Robert
Sent: Tuesday, February 28, 2017 5:20:12 PM
To: Schnare, David
Subject: RE: Eramet Marietta: call follow up

Working on it. Will have you a one-pager on Wednesday.

We are also working on the lead pipe/SRF short paper for you.

BTW, your participation in the First Assistants Meeting at noon helped a lot, especially the points about attempting to retain our best and brightest. Many senior leaders have spent much time and energy on reducing FTE and hiring smartly. In the last several years, we've seen a big positive change – some of the best, hard-working, engaged recruits who could work anywhere chose EPA. We hope to see those efforts come to fruition, and your words were helpful.

- Bob

Robert Kaplan
Acting Regional Administrator

EPA Region 5 – Chicago

Cell: 312-515-9827

Direct: 312-886-1499

Main: 312- 886-3000

From: Schnare, David
Sent: Tuesday, February 28, 2017 11:02 AM
To: Kaplan, Robert <kaplan.robert@epa.gov>
Subject: RE: Eramet Marietta: call follow up

Does this save the jobs?

If so, please prepare a one pager on your success and how we just saved 90 jobs.

d.

From: Kaplan, Robert
Sent: Tuesday, February 28, 2017 11:57 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Eramet Marietta: call follow up

David,

Good news on Eramet. We met with OAQPS yesterday. There are now no impediments to the delegation to Ohio. I have asked my staff to prepare a delegation of the authority from EPA to Ohio for THIS WEEK. Ohio can then grant as much time as necessary.

As I understand the issue, the facility in West Virginia will have no difficulties in complying with the rule. The Ohio facility will need a year or so more to comply – and Ohio is set to give them that flexibility. R5 supports the flexibility (and we have already been working with USDOJ).

I have been in close coordination with the Director of OEPA, Craig Butler.

Please give me a call if I should do anything further on this.

- Bob

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Cell: 312-515-9827

Direct: 312-886-1499

Main: 312- 886-3000

From: Kaplan, Robert
Sent: Monday, February 27, 2017 11:53 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Eramet Marietta: call follow up

Yes. The solution is a delegation to the state of Ohio, and Ohio will give the facility more time to comply. OAQPS has raised some concerns *with the delegation, and we have meeting with them today*. I have instructed my Air Director to move the delegation along unless there is a show stopper. Pleased to discuss. - Bob

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Cell: 312-515-9827

Direct: 312-886-1499

Main: 312- 886-3000

From: Schnare, David
Sent: Monday, February 27, 2017 11:29 AM
To: Kaplan, Robert <kaplan.robert@epa.gov>
Subject: FW: Eramet Marietta: call follow up

Were we going to work something out on this?

dschnare

From: john.willoughby@erametgroup.com [<mailto:john.willoughby@erametgroup.com>]
Sent: Monday, February 27, 2017 12:25 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: Eramet Marietta: call follow up

Mr. Schnare:

Thank you taking my call last Thursday. You indicated that you had some familiarity with our situation, but requested a summary document since you could not have an in-depth discussion at that time (attached). We are optimistic that this explanation clarifies our need for urgent action.

In addition to our supportive discussions with Ohio officials, we have also had ongoing dialog

with our Senators and Congressmen, both from Ohio and West Virginia (in addition to the other company, Felman Production, being located in West Virginia, about 40% of Eramet Marietta's employees reside across the Ohio River in that state). They are all very concerned over the pending loss of jobs, and support our efforts to seek reasonable solutions.

Please contact me with any questions or to schedule a meeting. Due to the critical timeline we face, we hope we can begin immediate discussions.

Thank you again for your willingness to listen.

Regards,

Work Safely First!

John A. Willoughby

Executive Advisor

Eramet Marietta, Inc.

mobile: 330.933.2182

CONFIDENTIALITE

L'information contenue dans ce courrier électronique et ses pièces jointes est confidentielle, et est établie à l'intention exclusive de ses destinataires. Dans le cas où ce message ne vous serait pas destiné, nous vous remercions de bien vouloir en aviser immédiatement l'émetteur et de procéder à sa suppression. Toutes copies, diffusions ou accès non autorisés à ce message sont interdits à toutes personnes, autre que le(s) destinataire(s). Un courrier électronique est susceptible d'altération ou de falsification et peut entraîner des pertes et/ou la destruction de données. Le Groupe ERAMET et/ou ses filiales déclinent toute responsabilité en la matière. En conséquence ce courrier électronique ainsi que ses pièces jointes sont utilisés à votre propre risque.

CONFIDENTIALITY

The information contained in this e-mail and any accompanying documents is confidential or otherwise protected from disclosure. If you are not the intended recipient, please immediately alert the sender by reply e-mail and delete this message and any attachments. Any copy, dissemination or unauthorized access of the

contents of this message by anyone other than the intended recipient is strictly prohibited. E-mails may be susceptible to falsification or alteration and cause data corruption and/or loss of data. ERAMET and/or any of its subsidiaries decline any liability resulting from the consequences thereof. Therefore, this e-mail and any attachments are used at your own risk.

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Benton, Donald
Sent: Tue 3/7/2017 7:49:16 PM
Subject: FW: Arrival Details- Tomorrow's Infrastructure: The Road Ahead

Gentleman,

I will be attending the Infrastructure summit at the Washington Post tomorrow morning and unable to attend our daily staff meeting. If I have the opportunity I will mention that the Administrator feels strongly that water infrastructure needs to be included in any package.

Thanks,

Don

Thank you for registering to attend Infrastructure: The Road Ahead **tomorrow morning** at The Washington Post.

Guest check-in will be located in the West Tower at 1301 K Street NW. Doors open at **8:30 a.m.** for breakfast.

The Washington Post
1301 K Street NW
Washington, DC 20071

Wednesday, March 8
Doors open for breakfast: 8:30 a.m.
Program: 9:00 - 10:30 a.m.

Metro

McPherson Square is the closet metro stop via the blue, orange and silver lines. Take the exit toward 14th and I Streets. The Washington Post is one block north and to your right on K Street.

Security

Please bring a photo ID. All bags will be searched prior to entry.

Infrastructure: The Road Ahead is presented by Mitsubishi Heavy Industries Group with support from Georgetown University McDonough School of Business.

[Unsubscribe](#)

To: Schnare, David[schnare.david@epa.gov]
From: Srinivasan, Gautam
Sent: Fri 3/3/2017 8:00:58 PM
Subject: Automatic reply: CAFE FR Notice

I will be out of the office until March 9. If you need assistance, please contact Lorie Schmidt (202-564-1681).

To: Schnare, David[schnare.david@epa.gov]
From: Jackson, Ryan
Sent: Fri 3/10/2017 1:26:20 AM

Deliberative Process Privilege/Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

To: Benton, Donald[benton.donald@epa.gov]; Schnare, David[schnare.david@epa.gov];
brown.byron@gmail.com[brown.byron@gmail.com]; Dravis, Samantha[dravis.samantha@epa.gov];
Konkus, John[konkus.john@epa.gov]
From: Jackson, Ryan
Sent: Fri 3/3/2017 2:15:34 AM

Don't worry about a meeting in the morning.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

To: Schnare, David[schnare.david@epa.gov]
From: Sarvadi, David G.
Sent: Fri 3/3/2017 7:58:16 PM
Subject: RE: May need to set up a meeting

The backlogs are caused by over interpretation of the statute. Let me know when I can explain.

DGS

David Sarvadi
Keller and Heckman llp
202-434-4249

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Friday, March 03, 2017 2:53 PM
To: Sarvadi, David G.
Subject: RE: May need to set up a meeting

No names available to me yet. Pruitt is very engaged on TSCA. Budget mark hit everyone but, as you know, the President's budget is dead on arrival. Also, Pruitt is prepared to take bodies from elsewhere to clear the TSCA/FIFRA backlogs.

d.

From: Sarvadi, David G. [mailto:Sarvadi@khlaw.com]
Sent: Friday, March 3, 2017 2:50 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: May need to set up a meeting

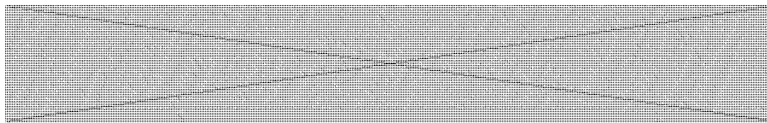
On the 14th or 15th. What's the word on a permanent AA for OPTS? They are in dire need of adult supervision. I saw a press report that Pruitt is partially focused on the requirements of the TSCA reform bill that passed last June. Also saw a comment that the budget proposal that OMB released did not do severe damage to the TSCA/Pesticide programs.

Still treading water?

Cordially,
DGS

David G. Sarvadi
Attorney-at-Law
tel: 202-434-4249 fax 202-434-4646 | sarvadi@khlaw.com
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that will cover OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at



Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is

strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

To: Williams, Steven[Williams.Steven@epa.gov]; Martin, JohnC[Martin.JohnC@epa.gov]; Kling, David[Kling.Dave@epa.gov]; Caraballo, Mario[Caraballo.Mario@epa.gov]; Weese, Eric[Weese.Eric@epa.gov]; Perrotta, Pasquale[Perrotta.Pasquale@epa.gov]; Dixon, Diane[Dixon.Diane@epa.gov]; Glazier, Kelly[Glazier.Kelly@epa.gov]; Reeder, John[Reeder.John@epa.gov]; Barnet, Henry[Barnet.Henry@epa.gov]; Schwartz, Martin[Schwartz.Martin@epa.gov]; McKinney, Robert[mckinney.robert@epa.gov]; Stanich, Ted[Stanich.Ted@epa.gov]; Noga, Vaughn[Noga.Vaughn@EPA.GOV]; Jackson, Vernon[Jackson.Vernon@epa.gov]; Jackson, Yvette[Jackson.Yvette@epa.gov]; Showman, John[Showman.John@epa.gov]; Vizian, Donna[Vizian.Donna@epa.gov]; Taylor, Jessica[taylor.jessica@epa.gov]; Jefferson, Gayle[Jefferson.Gayle@epa.gov]; Blake, Wendy[Blake.Wendy@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Martin, John C. (WF) [OGA[John.Martin5@ic.fbi.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Caldwell, James[Caldwell.James@epa.gov]; Youngblood, Charlotte[Youngblood.Charlotte@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Schnare, David[schnare.david@epa.gov]; Uribe, Diana[Uribe.Diana@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Allen, Reginald[Allen.Reginald@epa.gov]
Cc: OIG-OI-Supervisors[OIGOISupervisors@epa.gov]; Elkins, Arthur[Elkins.Arthur@epa.gov]; Sheehan, Charles[Sheehan.Charles@epa.gov]; Larsen, Alan[Larsen.Alan@epa.gov]; Hanger, Eric[Hanger.Eric@epa.gov]; Smith, Michael[Smith.Michael-S@epa.gov]; Sykes, Marcus[Sykes.Marcus@epa.gov]; Altenburg II, Paul[Altenburg.Paul@epa.gov]; Clark, Richard[Clark.Richard-J@epa.gov]; Leta-Leroux, Maria[Leta-Leroux.Maria@epa.gov]; Cruz, Craig[Cruz.Craig@epa.gov]; Earle, Sean[Earle.Sean@epa.gov]; Bailey, Heather[bailey.heather@epa.gov]; Yung, Jeffrey[Yung.Jeffrey@epa.gov]; Brown, Clay[Brown.Clay@epa.gov]; Harris, Reginald[harris.reginald@epa.gov]; Alderton, Steven M.[Alderton.Steve@epa.gov]; OIG-OI-1811s[OIG-OI-1811s@epa.gov]; Sherony, Stephanie[Sherony.Stephanie@epa.gov]
From: Sullivan, Patrick F.
Sent: Thur 3/9/2017 11:26:25 PM
Subject: Establishing an OIG Email Address to Report Threats

To Threat Coordination Group:

Effective today, March 9, 2017, the OIG has established an email address to report threats directed against EPA employees, contractors, facilities and assets. The email address is report.EPA.threats@epa.gov.

This email address can be used both internal and external to EPA. It will accept messages from epa.gov accounts, as well as commercial email services, like Gmail and yahoo.

Messages sent to the email address will be automatically forwarded to EPA OIG Office of Investigations (OI) supervisors, the OIG OI National Threat Coordinator and the OIG Hotline. This will ensure that the appropriate investigative response can take place, even after hours and

on weekends, if necessary.

Once you notify the OIG, please take steps to preserve potential evidence, such as protecting a letter for latent print examination, saving a voice mail message or identifying possible witnesses for later interview by the OIG.

Of course, in an emergency situation, telephone notification to the OIG can always be made. Feel free to call me if you cannot reach anyone else within OIG.

It is requested that OARM/SMD/FMSD forward this information to all appropriate HQ and regional security personnel.

It is request that OCEFT/CID/PSD forward this information to all appropriate OECA law enforcement personnel.

It is requested that OHS forward this information to all appropriate OHS personnel.

Other members of the Threat Coordination Group should distribute this information as you deem appropriate.

Thank you,

Patrick F. Sullivan

Assistant Inspector General for Investigations

EPA Office of Inspector General

Desk: (202) 566-0308

Cell: (571) 243-2195

FAX: (202) 566-0814

Email: sullivan.patrick@epa.gov

This message may contain information that is law enforcement sensitive but unclassified. If you are not the intended recipient, please immediately (1) advise the sender by reply e-mail that this message was inadvertently transmitted to you, and (2) delete this e-mail from your system. Thank you for your cooperation.

To: Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Dravis, Samantha
Sent: Thur 3/2/2017 4:17:38 PM

FYI,

Deliberative Process Privilege/Ex. 5

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Rodrigues, Cecil[rodrigues.cecil@epa.gov]; Schnare, David[schnare.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Minoli, Kevin
Sent: Fri 3/3/2017 2:13:58 AM
Subject: **Attorney-Work Product/Ex. 5**

Attorney-Work Product/Ex. 5

Attorney-Work Product/Ex. 5

Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

From: "Curtin, James" <curtin.james@epa.gov>
Date: March 2, 2017 at 4:42:24 PM EST
To: "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Prabhu, Aditi" <Prabhu.Aditi@epa.gov>
Cc: "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Schroer, Lee" <schroer.lee@epa.gov>
Subject: **Attorney-Work Product/Ex. 5**

Kevin,

Please use this revised version of the paper instead of the one I sent earlier.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Thanks.

Jim

Jim Curtin

USEPA Office of General Counsel

Water Law Office

202-564-5482

William Jefferson Clinton North Rm. 7451

To: Schnare, David[schnare.david@epa.gov]
From: Sarvadi, David G.
Sent: Tue 3/7/2017 7:36:36 PM
Subject: RE: I'm not making any progress with the TSCA new chemicals branch

Good to go. Time?

DGS

David Sarvadi
Keller and Heckman llp
202-434-4249

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Tuesday, March 07, 2017 2:13 PM
To: Sarvadi, David G.
Subject: RE: I'm not making any progress with the TSCA new chemicals branch

The 15th in the afternoon?

d.

From: Sarvadi, David G. [mailto:Sarvadi@khlaw.com]
Sent: Tuesday, March 7, 2017 2:11 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: I'm not making any progress with the TSCA new chemicals branch

No, I'm at the ABA meeting in Florida all week and I'm moderating a panel Thursday until 11:30. Can do Monday AM but Monday PM I'm in a meeting with pesticides. Tuesday and Wednesday next are pretty open.

DGS

David Sarvadi
Keller and Heckman llp
202-434-4249

From: Schnare, David [<mailto:schnare.david@epa.gov>]
Sent: Tuesday, March 07, 2017 1:43 PM
To: Sarvadi, David G.
Subject: RE: I'm not making any progress with the TSCA new chemicals branch

Can you come over here on Thursday afternoon this week?

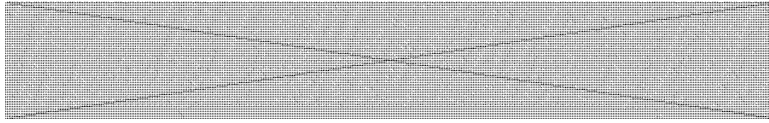
From: Sarvadi, David G. [<mailto:Sarvadi@khlaw.com>]
Sent: Tuesday, March 7, 2017 1:31 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: I'm not making any progress with the TSCA new chemicals branch

Can we get a half hour on Tuesday or Wednesday next week to explain our issues? We're on a critical path where lack of resolution before the end of the month means forcing the business offshore.

Cordially,
DGS

David G. Sarvadi
Attorney-at-Law
tel: 202-434-4249 fax 202-434-4646 | sarvadi@khlaw.com
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that will cover OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at



Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

To: Schnare, David[schnare.david@epa.gov]
From: Sarvadi, David G.
Sent: Fri 3/3/2017 7:50:12 PM
Subject: May need to set up a meeting
removed.txt

On the 14th or 15th. What's the word on a permanent AA for OPTS? They are in dire need of adult supervision. I saw a press report that Pruitt is partially focused on the requirements of the TSCA reform bill that passed last June. Also saw a comment that the budget proposal that OMB released did not do severe damage to the TSCA/Pesticide programs.

Still treading water?

Cordially,
DGS

David G. Sarvadi
Attorney-at-Law
tel: 202-434-4249 fax 202-434-4646 | sarvadi@khlaw.com
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that will cover OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at



Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that

you immediately notify us of this error by reply e-mail and then delete it from your system.

To: Schnare, David[schnare.david@epa.gov]
From: Alonso, Rich
Sent: Thur 3/2/2017 4:14:05 PM
Subject: Catching-up

David –

Congrats on your position at EPA. I know you are very busy, but it would be great to catch-up. Are you free for lunch or coffee late next week?

Rich

RICH ALONSO

Partner

Richard.Alonso@bracewelllaw.com

T: +1.202.828.5861 | F: +1.800.404.3970 | M: +1.703.314.2247

BRACEWELL LLP

2001 M Street NW, Suite 900 | Washington, D.C. | 20036-3310

bracewelllaw.com | [profile](#) | [download v-card](#)

CONFIDENTIALITY STATEMENT

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

To: Schnare, David[schnare.david@epa.gov]
From: Grantham, Nancy
Sent: Thur 3/2/2017 4:04:36 PM
Subject: FW: Head's up from today's Administrator daily

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Schnare, David
Sent: Thursday, March 02, 2017 9:09 AM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Reeder, John <Reeder.John@epa.gov>
Subject: Head's up from today's Administrator daily

The Administrator has mentioned on multiple occasions that he wants to use metrics to manage the Agency. Today he specifically discussed the pesticides/toxics program, which is on his mind due to pressing issues there. He even indicated that if that office needs more bodies, he would be prepared to see where from other offices they can be found to get the backlog reduced.

In general, he wants every program (and regions I believe) to have a set of metrics that reflect environmental quality (outcomes rather than outputs are desirable, where possible). He wants to know the current baseline and wants to see a target (including milestone date) for improvement. Examples he has mentioned in the recent past are Superfund site remediation completed and the site removed from the NPL (I'm not sure he yet has been informed why many sites remain on the list despite remediation completion), CAA attainment achieved, impaired waters list emptied.

I encourage you to get prepared to offer these kinds of metrics and work them into your reports and conversations with him.

dschnare

To: Ericksen, Doug[ericksen.doug@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Schnare, David[schnare.david@epa.gov]
Cc: Cox, Michael[Cox.Michael@epa.gov]
From: Cox, Michael
Sent: Fri 2/24/2017 8:17:28 PM
Subject: Presentation by Administrator Pruitt: Friendly suggestions for next presentation

I wanted to pass along some friendly suggestions from a fellow Pacific Northwesterner.

I started working for EPA in 1987 (I actually worked with Dave on the Lead/Copper Drinking Water Rule. He may not remember me) and have heard several new Administrators first speeches.

I thought Administrators Pruitt's presentation was good especially when he discussed the importance of listening and learning.

I understand this was his introduction to EPA staff and it was short, but I had a few suggestions for future speeches to EPA employees.

1. **Science:** I did not hear much about science. For many of us at EPA, using the best science is the backbone of the work we do. Suggest emphasizing the use of science.
2. **Tribes:** Did not hear anything about Tribes. They are a critical partner and as you know we have specific treaty obligations towards tribes. Suggest including tribes as partners along with states and others.
3. **Human Health:** As you know our mission is to protect human health and the environment. I heard a lot about the environment but not much, if anything, about human health. Suggest emphasizing both.
4. **Questions:** I understand the intent of the first speech was to introduce himself, but in the future I would suggest taking questions. While I understand this can be challenging, I think to

gain credibility it is important. A past Administrator came to Seattle and her staff told us very clearly that we could not ask questions. We could submit written questions but not ask directly. I think it sends a very bad message to staff if the leader of the organization is not willing to answer questions.

5. **Quote:** The quote Administrator Pruitt provided from John Muir was good. However, subsequent to that, some people went and found the whole quote, which conveys a different meaning read in whole than I think Administrator Pruitt wanted to convey.

Anyway. Good luck.

Michael Cox

Office of Environmental Assessment

US EPA Region 10, 1200 Sixth Avenue, Suite 900

Seattle, WA 98101

206-553-1597

cox.michael@epa.gov

To: Benton, Donald[benton.donald@epa.gov]; Schnare, David[schnare.david@epa.gov]; 'scott.pruitt@oag.ok.gov'['scott.pruitt@oag.ok.gov']
Cc:

Personal Email/Ex. 6 - Michelle Connell Hale
Personal Email/Ex. 6 - Samantha Dravis

 Buckley, Sarah (ENRD)[Sarah.Buckley@usdoj.gov]; Mayor Jon Mitchell[jon.mitchell@newbedford-ma.gov]; thoye@taunton-ma.gov[thoye@taunton-ma.gov]; Mayor@fallriverma.org[Mayor@fallriverma.org]
From: John Hall
Sent: Mon 2/13/2017 6:42:43 PM
Subject: RE: Request for EPA Agreement to Alternative Dispute Resolution - City of Taunton v. EPA Taunton Est Group ltr to Pruitt 2-9-17.pdf
[Att 1 - EPA FOIA Reply on Sentinel Method - 12-24-2014.pdf](#)
[Att 2 - EPA Response to CCR Letter RE Renewed Request for SAB Review - Response dated - 1-22-16.pdf](#)
[Att 3 - Howes Letter on Taunton River 5-1-15.pdf](#)
[Att 1a contd EPA-HQ-2015-000462 - Sentinel Method Follow-up Reply \(1-6-2015\).pdf](#)

Dear Administrator Pruitt:

Attached please find a letter from the Taunton Estuary Municipal Coalition requesting that the Agency reconsider, under the alternative dispute resolution process and independent peer review, the need for the stringent "state of the art" nitrogen limitations that EPA Region I has imposed on the City of Taunton (and is planning to further impose on other nearby communities). (Attachments). In October 2016, the City of Taunton was forced to file a Circuit Court appeal regarding the stringent nitrogen limitations, as well as other limitations that the City contends were beyond EPA's statutory authority (e.g., flow limits). That permit appeal action is presently pending before the 1st Circuit Court of Appeals. As explained in the attached letter from the Municipal Coalition, EPA's action ignored the finding of three nationally recognized experts who all uniformly concluded that the agency's "technical" approach (sentinel method) used to create the stringent nitrogen limitations was fundamentally flawed and would not result in meaningful ecological improvement in the Taunton Estuary. EPA Headquarters also refused to conduct a "peer review" of the Region's unproven sentinel method (Attachment 2), even after acknowledging, under FOIA, that it possessed no records showing that the new methodology used to set the limits was scientifically defensible (Attachment 1 and 1a) and the lead researcher for the Taunton Estuary informed the Region that his data were being misapplied in deriving the stringent limits. (Attachment 3).

The City of Taunton and the Municipal Coalition believe this is precisely the type of arbitrary regulatory action that the Trump Administration has committed to address to avoid wasting local resources. Regarding the ongoing litigation, in December 2016, EPA informed the 1st Circuit Mediation official - Hon. Patrick J. King (ret.), that EPA would not participate in any form of alternative dispute resolution. *It would be greatly appreciated if you would inform the City whether the new Administration would reconsider that position.* If so, appropriate filings with the 1st Circuit could occur to place the case in abeyance, pending such dispute resolution discussions.

The Municipal Coalition (and Center for Regulatory Reasonableness) would also look

forward to participating in an independent peer review that could evaluate the reasonableness of using Region I's unproven methodology in future permit actions. If such an independent peer review confirms that the Region's novel approach, as applied, is scientifically defensible, the communities would support further nutrient reduction expenditures, knowing that those resources are well spent.

Thank you for your consideration of these requests.

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

December 24, 2014

Alexander J.E. English
Hall & Associates
1620 I St., NW
Washington, DC 20006-4033

OFFICE OF
WATER

RE: Freedom of Information Act Request EPA-HQ-2015-000462

Dear Mr. English:

This letter responds to your October 14, 2014, request under the Freedom of Information Act (FOIA) for documents pertaining to use of the "sentinel site method" in EPA Region 1. As explained below, the Agency does not have records that are responsive to your request.

1. *"The public notice in the federal register regarding the agency's intended use of the Sentinel Site Method for the purposes of selecting nutrient criteria and/or meeting dissolved oxygen criteria in estuarine waters."*

Records in support of individual permitting decisions (e.g., the draft NPDES permit and fact sheets for the Taunton, Massachusetts wastewater treatment facility), are not published in the Federal Register; thus, there are no records responsive to this request.

2. *"Any Science Advisory Board review of this method (as applied by EPA Region 1) finding it scientifically defensible."*

The Science Advisory Board (SAB) has not reviewed the permit administrative records for NPDES permits developed for facilities discharging to the Taunton River Estuary; thus, there are no records responsive to this request.

3. *"Any documentation confirming that EPA has previously peer-reviewed the "sentinel approach" as proposed for use in Region 1."*

There are no records responsive to this request.

4. *Any correspondence sent from EPA HQ to the agency's Regional offices stating that the "sentinel approach" was scientifically defensible and an acceptable means for generating numeric nutrient criteria and/or establishing numeric nutrient limits under 40 CFR 122.44(d).*

There are no records responsive to this request.

Sincerely,

Deborah G. Nagle, Director
Water Permits Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

January 6, 2015

Alexander J.E. English
Hall & Associates
1620 I St., NW
Washington, DC 20006-4033

OFFICE OF
WATER

RE: Freedom of Information Act Request EPA-HQ-2015-000462

Dear Mr. English:

This letter responds to the clarification you sent by email on January 5, 2014, in reply to our December 23, 2014, response to the above-named Freedom of Information Act (FOIA) request. Your FOIA request sought documents pertaining to use of the "sentinel site method" in EPA Region 1. You clarified that items 1 and 2 in that request were intended to address the "sentinel" method itself, rather than any individual permitting decisions.

Our response to your clarified request on items 1 and 2 is as follows:

1. ***"The public notice in the federal register regarding the agency's intended use of the Sentinel Site Method for the purposes of selecting nutrient criteria and/or meeting dissolved oxygen criteria in estuarine waters."***

There are no records that are responsive to your request.

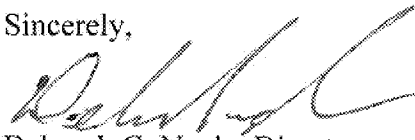
2. ***"Any Science Advisory Board review of this method (as applied by EPA Region 1) finding it scientifically defensible."***

There are no records that are responsive to your request.

The cost of providing this information is \$24.25. An itemized invoice covering the charges for processing your request is enclosed. Please forward your check or money order, made payable to the U. S. Environmental Protection Agency, within 30 days of the date of this response. Your check should refer to the FOIA Tracking number above and should be accompanied by the top portion of the enclosed Bill for Collection. Your prompt payment of the amount indicated will be appreciated. In a continued effort to streamline the FOIA process, EPA is now offering you the option of paying your FOIA bill on-line. There is no requirement for you to use the on-line system to pay your bill, but if you choose to do so please go to www.pay.gov and follow the simple instructions. Please be sure to have your FOIA tracking number available so that the payment can be applied to the correct charge.

You may appeal this no records response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in dark ink, appearing to read "Deborah G. Nagle", written in a cursive style.

Deborah G. Nagle, Director
Water Permits Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

1/22/2016

Christopher L. Risetto, General Counsel
Center for Regulatory Reasonableness
1620 I Street, N.W., Suite 701
Washington, DC 20006

OFFICE OF
WATER

RE: Renewed request for SAB Review

Dear Mr. Risetto:

I am writing in response to your December 1, 2015, letter to Environmental Protection Agency (EPA) Administrator Gina McCarthy and Science Advisory Board (SAB) Director Christopher Zarba, requesting peer review of EPA Region 1's method of deriving water quality-based effluent limitations in the Massachusetts Taunton River watershed.

In response to your similar request in an October 2, 2014, letter, we responded on January 16, 2015, informing you that we had decided against seeking peer review. Your December 2015 correspondence attached a letter from Dr. Brian Howes, a professor at the School for Marine Science and Technology at the University of Massachusetts/Dartmouth, that commented on Region 1's use of a particular "sentinel station" to develop nutrient targets for the Taunton River watershed. We do not see any information in Dr. Howes's letter that causes us to reconsider our response to your 2014 letter. We do not consider Region 1's permit-specific technical approach to constitute a new scientific methodology, nor is peer review of such approaches "required by federal law and guidance." Accordingly, we do not intend to seek peer review of the technical approach Region 1 used to develop permit limits in the Taunton River watershed.

We continue to support Region 1's use of the best available information to interpret the state's narrative water quality criteria for nutrients and apply it to develop appropriate numeric effluent limitations. The information contained in the permit fact sheet provides ample documentation that the regulatory "reasonable potential" test in 40 CFR 122.44(d)(1)(i) has been met (i.e., permit limits must be developed to control any pollutant that is or may be discharged at a level "which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including State narrative criteria for water quality"). Having determined that reasonable potential existed, the Region used an appropriate technical approach, documented in the administrative record, to develop numeric targets for the discharging facilities.

Additionally, the Taunton permit is currently under appeal to the Environmental Appeals Board (EAB). That forum, under the provisions of 40 CFR 124.19, is the appropriate place to resolve

your questions about the technical and administrative basis for the challenged Taunton River watershed permits.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Beauvais". The signature is fluid and cursive, with a large initial "J" and "B".

Joel Beauvais
Deputy Assistant Administrator

cc: Christopher Zarba, SAB
Curt Spalding, EPA Region 1



School for Marine Science and Technology

706 South Rodney French Blvd., New Bedford, MA 02744

Office 508-999-8193 Fax 508-999-8197

May 1, 2015

VIA E-MAIL

Mr. Joe Federico
Beta Engineering Inc.
6 Blackstone Valley Place
Suite 101
Lincoln, RI 02865

RE: Use of Sentinel Site Approach Based on Massachusetts Estuary Project Data for Setting Nutrient Objectives for the Taunton Estuary

Dear Mr. Federico:

I understand that the City of Taunton and other communities tributary to Mount Hope Bay are interested in undertaking a detailed analysis of existing studies and system requirements with the objective of creating a scientifically defensible approach to setting nutrient reduction requirements for the Taunton Estuary and eventually, Mount Hope Bay (MHB). That action is to be applauded and is, in my opinion, long overdue. This letter responds to your recent inquiries regarding the sentinel site approach used by EPA in setting nutrient objectives for the Taunton Estuary based on data that I collected in 2004-2006 for that system that was to support a future Massachusetts Estuary Project (MEP) nitrogen threshold assessment.

The purpose of that data collection was to allow the MEP process to be initiated, to allow water quality model verification and to allow for an empirical evaluation of how nutrients are currently impacting various areas of the Mount Hope Bay-Taunton River system. However, as is clear from our report, additional studies and detailed consideration of the system hydrodynamics and the major factors affecting differing algal/DO responses and key habitats (eelgrass, benthic animals) are necessary *before* one could make these determinations and select a defensible "sentinel station" to represent the nutrient management target for the system. That has yet to occur.

Regarding the selection of MHB16 as the "sentinel station" for the Taunton River estuarine reaches, the existing data and studies for the system would not support its use as a valid sentinel site, particularly as relates to the MEP program. First, the site does not appear to have any obvious relevance for predicting nutrient effects in the Taunton Estuary as it is far removed, has a large intervening basin (Mt. Hope Bay) with multiple inputs and differing structure, and is subject to far different stressors and physical constraints. Second, MHB16 was confirmed by other researchers to exhibit very different

hydrodynamic characteristics from the rest of the system, including Mount Hope Bay itself (See attached figures (Kincaid, 2006); see, also hydrodynamic analyses (Zhao, Chen & Cowles, 2006; Chen, Zhao, Cowles & Rothschild, 2008)). Also, this site in the Sakonnet River is not the dominant discharge channel from Mt. Hope Bay adding an additional confounding element. Consequently, the nutrient response at this site would not be representative of the expected response within the Taunton River estuarine reaches.

Thus, while, in my opinion, a sentinel station approach is valid for management of nutrient impacts, there are multiple factors that need to be taken into account before implementing this approach and selecting the location. Mount Hope Bay is a complex system with its own major inputs of which the Taunton River is but one (a big one certainly) as well exchanges with Narragansett Bay. Stratification is a major factor that broadly affects DO conditions throughout this system and that needs to be evaluated more thoroughly to understand the DO regime.

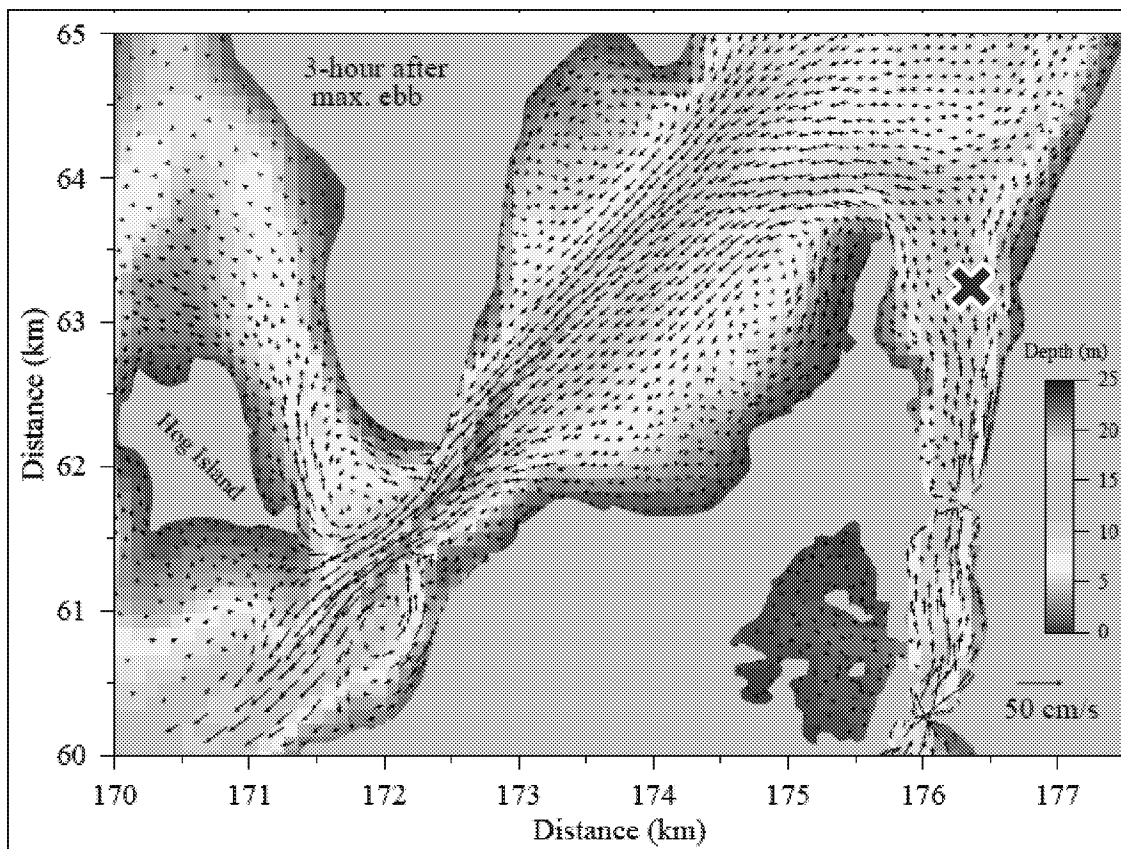
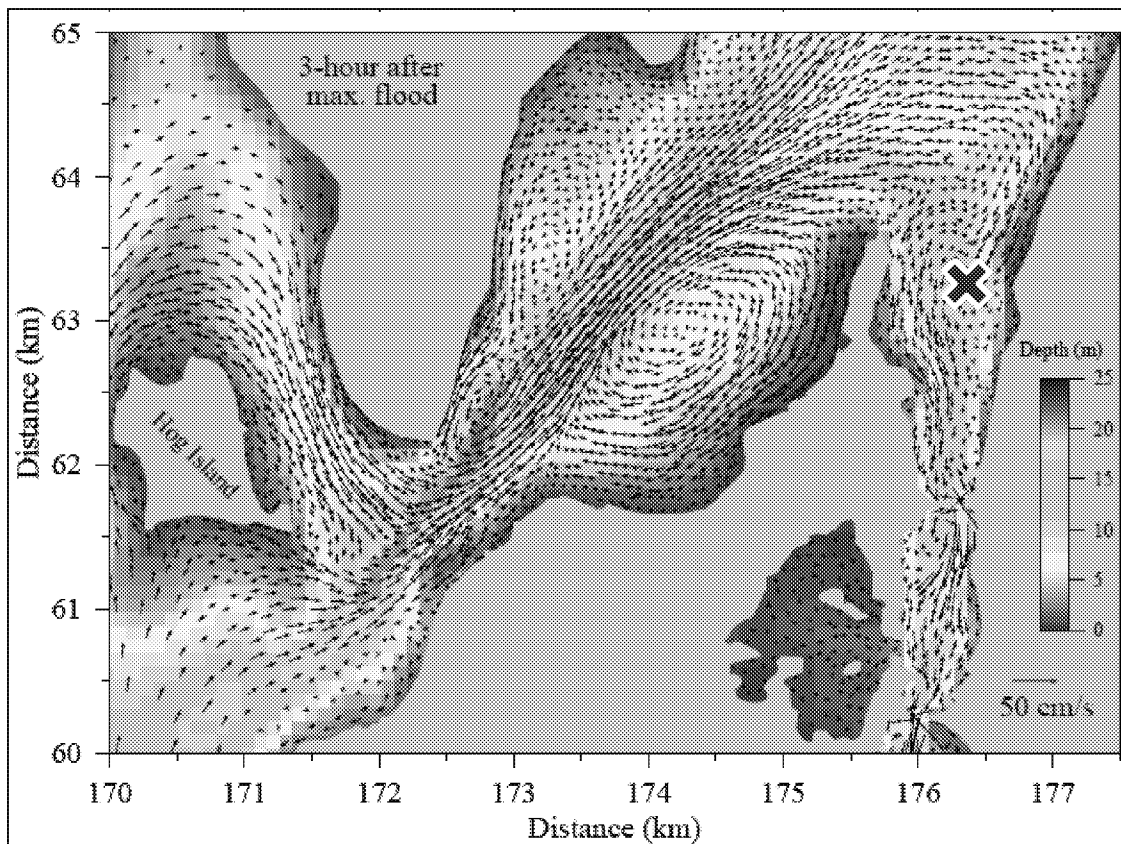
I hope that you may find these comments helpful. We look forward to helping Taunton, Brockton and other affected communities to resolve these complex issues. Let me know if I may be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian L. Howes", with a stylized flourish at the end.

Brian L. Howes, Ph.D.
Professor, SMAST-UMass Dartmouth
Technical Director Massachusetts Estuaries Project

Attachment



Taunton Estuary Municipal Coalition

February 9, 2017

Via Email and First Class US Mail

Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Request for Peer Review of EPA Region 1's Unprecedented Use of the Sentinel Method to Impose Stringent Nitrogen Limitations

Dear Administrator Pruitt:

On behalf of the major cities discharging to the Taunton Estuary (Taunton and Fall River) and New Bedford, I am submitting this letter requesting your intervention and review of a series of unprecedented and scientifically indefensible regulatory decisions made by EPA Region 1 an attempt to impose extremely stringent nitrogen limitations on our facilities. These NPDES permit actions represent quintessential examples of decision making based on EPA policy rather than sound science and environmental need. If left in place, these new mandates will impose well over \$100 million in new wastewater and stormwater compliance costs for our cities. Given the new administration's desire to eliminate wasteful regulation, we are hoping to obtain your assistance in staying further permit appeal proceedings and objectively reviewing the scientific concerns we had raised previously, which were all disregarded by the prior administration. The following provides some brief background on the matter.

In 2015, EPA finalized a permit imposing "state of the art" nitrogen limitations on Taunton's wastewater treatment facility after a protracted dispute regarding the need for such limitations. EPA issued a similar permit for Brockton in January, 2017, and intends similar mandates for New Bedford and Fall River, but due to ongoing appeals has not finalized those actions. EPA Region I imposed the stringent nutrient limitations even though:

1. The Taunton Estuary is not identified as nutrient impaired;

2. Three nationally recognized experts (including Dr. Steven Chapra, Tufts University of international renown) stated that EPA's novel calculation procedure (known as the "Sentinel Method") was not scientifically defensible and would clearly give an erroneous result;
3. System data, collected by Dr. Brian Howes in 2004-2006, confirmed that the stringent nitrogen limitations would not materially improve dissolved oxygen levels (the stated concern of EPA's nutrient reduction mandate), and;
4. EPA's analysis ignored all of the other system improvements occurring since 2004 that EPA itself had mandated to improve water quality in the system (including the closure of major power plants, reduction of combined sewer overflows and nutrient discharges by major Rhode Island facilities).

Individually, each of these errors should have warranted a remand of the permit. Even EPA Headquarters had confirmed, under FOIA, that the Region's novel procedure for claiming stringent nutrient limits were required was never peer reviewed or determined by anyone to be scientifically defensible. (Attachment 1) Nonetheless, EPA Headquarters refused a request from the *Center for Regulatory Reasonableness* to peer review the new method (in derogation of the federal Peer Review Handbook). (Attachment 2) EPA's Environmental Appeal Board (EAB) rejected all technical arguments and actively prevented consideration of the reports from independent experts confirming the Region's approach was technically baseless (See, Attachment 3, Letter of Dr. Brian Howes, Dartmouth- SMAST, who confirmed EPA was misapplying his data in reaching its conclusions). Left with little other choice, the City of Taunton appealed the EAB's decision to the First Circuit Court of Appeal (*see City of Taunton v. EPA*, (1st Cir. 16-2280)) and filed a permit modification request with EPA Region 1 to properly consider the information the EAB refused to assess in supporting EPA's permit action. Those actions are presently pending.

Requested Action

The cities believe that all permitting and appeal actions should be stayed, pending a complete scientific review of the Region's actions. An independent peer review of EPA's untested "Sentinel Method" should occur, as required by the federal Peer Review Policy, given the enormous local resources at stake. It is our belief that no group of credible scientists would possibly find this approach to be "scientifically defensible" which is why the prior administration refused to allow such review. In any event, should such review determine the Region's actions are, in fact, scientifically defensible and accurately reflect the impact of nitrogen on the DO regime of the Taunton Estuary, we would be willing to live with that result, knowing our monies will be well spent.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Th Hoyer Jr", written in dark ink.

Thomas C. Hoyer Jr

Mayor

Enclosures

cc. David Schnare, USEPA
Don Benton, USEPA
Mayor Correia, Fall River
Mayor Mitchell, New Bedford

To: Pruitt, Scott[Pruitt.Scott@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Schnare, David[schnare.david@epa.gov]
Cc: Buckley, Sarah (ENRD)[Sarah.Buckley@usdoj.gov]; Kaplan, David (ENRD)[David.Kaplan@usdoj.gov]; thoye@taunton-ma.gov[thoye@taunton-ma.gov]; Daniel de Abreu[ddeabreu@taunton-ma.gov]
From: John Hall
Sent: Wed 2/22/2017 4:37:41 PM
Subject: Request for Agency Agreement to Mediation/Settlement Discussions in City of Taunton v. EPA (1st Cir. 16-2280)
[Taunton Est Group ltr to Pruitt 2-9-17.pdf](#)

Dear Administrator Pruitt:

Congratulations on your confirmation as the new Trump Administration head of EPA. Your arrival could not have come at a more opportune time for the City of Taunton, Massachusetts.

The City of Taunton is requesting that their permit challenge pending before the 1st Circuit be put in abeyance, to allow settlement discussion of the issues with your staff to occur. As noted in the attached correspondence from the Taunton Estuary Municipal Coalition, EPA's permitting action grossly conflicted with the accepted, peer reviewed scientific methods for evaluating nutrient effects and failed to follow the "rule of law". In particular, the extreme nitrogen reduction mandate and other limits imposed on this economically depressed city were a result of an environmental agenda to regulate more restrictively, regardless of the facts.

We are confident that a frank discussion of the events that transpired and a fair review of the science and regulatory requirements applicable to such cases, would result in an agreement that this permit action needs to be withdrawn and reconsidered. If your Office would inform the Justice Department and the City that the Agency is agreeable to putting the matter in abeyance, pending settlement discussions(e.g., alternative dispute resolution), the appropriate motion could be filed with the 1st Circuit. Such action would allow the City's limited resources to be directed at a productive resolution of the matter.

The City of Taunton looks forward to your Office's response. Thank you for your consideration of this request.

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

Taunton Estuary Municipal Coalition

February 9, 2017

Via Email and First Class US Mail

Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Request for Peer Review of EPA Region 1's Unprecedented Use of the Sentinel Method to Impose Stringent Nitrogen Limitations

Dear Administrator Pruitt:

On behalf of the major cities discharging to the Taunton Estuary (Taunton and Fall River) and New Bedford, I am submitting this letter requesting your intervention and review of a series of unprecedented and scientifically indefensible regulatory decisions made by EPA Region 1 an attempt to impose extremely stringent nitrogen limitations on our facilities. These NPDES permit actions represent quintessential examples of decision making based on EPA policy rather than sound science and environmental need. If left in place, these new mandates will impose well over \$100 million in new wastewater and stormwater compliance costs for our cities. Given the new administration's desire to eliminate wasteful regulation, we are hoping to obtain your assistance in staying further permit appeal proceedings and objectively reviewing the scientific concerns we had raised previously, which were all disregarded by the prior administration. The following provides some brief background on the matter.

In 2015, EPA finalized a permit imposing "state of the art" nitrogen limitations on Taunton's wastewater treatment facility after a protracted dispute regarding the need for such limitations. EPA issued a similar permit for Brockton in January, 2017, and intends similar mandates for New Bedford and Fall River, but due to ongoing appeals has not finalized those actions. EPA Region I imposed the stringent nutrient limitations even though:

1. The Taunton Estuary is not identified as nutrient impaired;

2. Three nationally recognized experts (including Dr. Steven Chapra, Tufts University of international renown) stated that EPA's novel calculation procedure (known as the "Sentinel Method") was not scientifically defensible and would clearly give an erroneous result;
3. System data, collected by Dr. Brian Howes in 2004-2006, confirmed that the stringent nitrogen limitations would not materially improve dissolved oxygen levels (the stated concern of EPA's nutrient reduction mandate), and;
4. EPA's analysis ignored all of the other system improvements occurring since 2004 that EPA itself had mandated to improve water quality in the system (including the closure of major power plants, reduction of combined sewer overflows and nutrient discharges by major Rhode Island facilities).

Individually, each of these errors should have warranted a remand of the permit. Even EPA Headquarters had confirmed, under FOIA, that the Region's novel procedure for claiming stringent nutrient limits were required was never peer reviewed or determined by anyone to be scientifically defensible. (Attachment 1) Nonetheless, EPA Headquarters refused a request from the *Center for Regulatory Reasonableness* to peer review the new method (in derogation of the federal Peer Review Handbook). (Attachment 2) EPA's Environmental Appeal Board (EAB) rejected all technical arguments and actively prevented consideration of the reports from independent experts confirming the Region's approach was technically baseless (See, Attachment 3, Letter of Dr. Brian Howes, Dartmouth- SMAST, who confirmed EPA was misapplying his data in reaching its conclusions). Left with little other choice, the City of Taunton appealed the EAB's decision to the First Circuit Court of Appeal (*see City of Taunton v. EPA*, (1st Cir. 16-2280)) and filed a permit modification request with EPA Region 1 to properly consider the information the EAB refused to assess in supporting EPA's permit action. Those actions are presently pending.

Requested Action

The cities believe that all permitting and appeal actions should be stayed, pending a complete scientific review of the Region's actions. An independent peer review of EPA's untested "Sentinel Method" should occur, as required by the federal Peer Review Policy, given the enormous local resources at stake. It is our belief that no group of credible scientists would possibly find this approach to be "scientifically defensible" which is why the prior administration refused to allow such review. In any event, should such review determine the Region's actions are, in fact, scientifically defensible and accurately reflect the impact of nitrogen on the DO regime of the Taunton Estuary, we would be willing to live with that result, knowing our monies will be well spent.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in dark ink, appearing to read "Th Hoyer Jr", written in a cursive style.

Thomas C. Hoyer Jr

Mayor

Enclosures

cc. David Schnare, USEPA
Don Benton, USEPA
Mayor Correia, Fall River
Mayor Mitchell, New Bedford

To: Schnare, David[schnare.david@epa.gov]
From: Minoli, Kevin
Sent: Fri 3/3/2017 1:16:37 AM
Subject: FW: OGC's Weekly Report for 3/2/17

FYI

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Minoli, Kevin
Sent: Thursday, March 02, 2017 8:16 PM
To: Weekly Report Group <Weekly_Report_Group@epa.gov>
Cc: Packard, Elise <Packard.Elise@epa.gov>; Hautamaki, Jared <Hautamaki.Jared@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Pirzadeh, Michelle <Pirzadeh.Michelle@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Rodrigues, Cecil <rodrigues.cecil@epa.gov>; Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>; Thomas, Deb <thomas.debrah@epa.gov>; Szaro, Deb <Szaro.Deb@epa.gov>
Subject: OGC's Weekly Report for 3/2/17

All- Attached is OGC's Weekly Report. Two important notes:

1) For upcoming deadlines or actions we expect to take between now and next Friday, the report explains what we currently intend to do. We are happy and ready to brief folks on the available options and why the expected course of action is what it is, so that you/they may provide direction. Please just let me know which issues below folks would like to meet about and we will set that up. Because most of these deadlines are external deadlines set by others, we will proceed as indicated below on those folks do not ask for more information or additional time on.

2) I will be on work travel beginning 2:00 Monday the 6th through the end of the day on Wednesday the 8th. Elise Packard, cc'd here, will be in the office and step in for me as needed. I will be available by phone, email, and video if necessary, although I will only be checking my email periodically. If the need is immediate, the best way to reach me is to call my mobile: **Ex. 6**

Ex. 6 or the main OGC office line: 202-564-5551.

Thanks, Kevin

OGC Weekly Report

Notable Items from the Week of February 27, 2017

Favorable decision in *Center for Regulatory Reasonableness v. EPA*, (D.C. Cir.):

The D.C. Circuit denied review of two EPA letters that discussed an earlier 8th Circuit decision, concluding that the court lacked CWA section 509(b) jurisdiction because the letters did not “announce” an effluent limitation or other limitation. The court held that the letters and additional extra-record materials were a “non-acquiescence statement” discussing how EPA would interpret the 8th Circuit decision, and that petitioner could challenge the statement in a district court APA suit or seek mandamus relief from the 8th Circuit.

Two new lawsuits filed challenging EPA’s responses to stormwater residual designation petitions: Environmental groups petitioned EPA for categorical designation of unregulated stormwater discharges from commercial, industrial, and institutional (CII) sites in four watersheds under 40 C.F.R. § 122.26(a)(9)(i)(D). EPA denied all four petitions, and petitions of review have now been filed with respect to three of the denials: *Blue Water Baltimore, et al. v. Pruitt, et al.* in the 4th Cir. and *Los Angeles Waterkeeper, et al v. Scott Pruitt, et al.* in the 9th Cir.

New litigation re: Columbia & Lower Snake Rivers (*Columbia Riverkeeper et al. v. Pruitt* (W.D. Wash.))

New complaint alleging non-discretionary duty for EPA to issue TMDL for temperature impairments in Columbia and Lower Snake Rivers, which include interstate waters, based on “constructive submission” theory. In the alternative, alleged unreasonable delay under APA for failure to complete Preliminary Draft TMDL EPA proposed in 2003.

Notable Upcoming Items Between Now and Next Week:

Key Litigation Decisions & Deadlines (Note: (req) indicates date DOJ requested EPA’s input/decision)

Ex. 5 Attorney Client Privilege, Deliberative Process Privilege, Attorney Work Product

Ex. 5 Attorney Client Privilege, Deliberative Process Privilege, Attorney Work Product

Additional Actions for Awareness

Attorney Client Privilege, Deliberative Process Privilege/Ex. 5

Meetings & Events

3/7-8/17 Acting General Counsel out of the office in Executive Challenge Program in person session outside of Philadelphia, PA. He will be available by phone and email.

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

To: Schnare, David[schnare.david@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Starfield, Lawrence
Sent: Thur 3/2/2017 3:31:38 PM
Subject: RE: Another item from the Administrator's daily

Dave,

Message received. I will try to set up a briefing for the Administrator on active enforcement settlements, to give him greater comfort in that area.

Thanks.

Larry

Sent from my Windows Phone

From: Schnare, David
Sent: 3/2/2017 9:32 AM
To: Minoli, Kevin; Starfield, Lawrence
Subject: RE: Another item from the Administrator's daily

I made the point that this was an enforcement case and that, as a working attorney, we all seek to settle rather than go to court. He push back at that point, making it clear he didn't want to settle cases in which we were the defendant.

None the less, I agree with your OECA point. Larry, you need to bring major settlements up to the Administrator until he gets tired of hearing them or has indicated he has gained enough confidence in the staff to not need to see them any longer. I can't be much more clear than that.

I really think this is mostly a sue and settle matter.

d.

From: Minoli, Kevin
Sent: Thursday, March 2, 2017 9:29 AM
To: Schnare, David <schnare.david@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Subject: Re: Another item from the Administrator's daily

Adding in Larry as I think this is an enforcement matter not one OGC was involved in.

As far as the overarching point, I've already started preparing folks to have that conversation. We need to resolve how to elevate these matters to him in a timely way so he is not frustrated each time.

Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Mar 2, 2017, at 9:25 AM, Schnare, David <schnare.david@epa.gov> wrote:

The Administrator was displeased to see the phrase “judicial Consent Order” on his daily brief (referenced in a “good news” item related to the S.H. Bell Facility in R5). He went off on consent decrees, specifically stating he did not want a court telling him when he had to do something (i.e., the classic sue and settle methods used in “friendly” suits in the past).

He simply does not want to settle those kind of cases (where EPA is the defendant).

FWIW, I suggest you work with the regions (if necessary) and your staff to identify every such case against EPA where you would normally settle, and be ready to brief him on any recommendations you (and DOJ) may have on resolution of those cases.

.

dschnare

To: Schnare, David[schnare.david@epa.gov]
From: Kenny, Shannon
Sent: Thur 3/2/2017 3:06:19 PM
Subject: CAFE

Hi David, could you share a copy of the CAFE notice this morning, so Sarah & I can have adequate time to review? OGC is not keen to share. These types of notices are typically drafted by the programs, so we want to be sure mistakes are avoided.

Thanks!
Shannon

Sent from my iPhone

To: Schnare, David[schnare.david@epa.gov]
From: Szaro, Deb
Sent: Thur 3/2/2017 2:45:44 PM
Subject: RE: Head's up from today's Administrator daily

Thanks David. This is helpful to know.

From: Schnare, David
Sent: Thursday, March 02, 2017 9:09 AM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Reeder, John <Reeder.John@epa.gov>
Subject: Head's up from today's Administrator daily

The Administrator has mentioned on multiple occasions that he wants to use metrics to manage the Agency. Today he specifically discussed the pesticides/toxics program, which is on his mind due to pressing issues there. He even indicated that if that office needs more bodies, he would be prepared to see where from other offices they can be found to get the backlog reduced.

In general, he wants every program (and regions I believe) to have a set of metrics that reflect environmental quality (outcomes rather than outputs are desirable, where possible). He wants to know the current baseline and wants to see a target (including milestone date) for improvement. Examples he has mentioned in the recent past are Superfund site remediation completed and the site removed from the NPL (I'm not sure he yet has been informed why many sites remain on the list despite remediation completion), CAA attainment achieved, impaired waters list emptied.

I encourage you to get prepared to offer these kinds of metrics and work them into your reports and conversations with him.

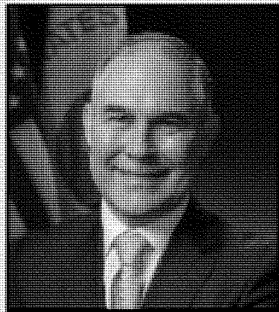
dschnare

To: Adm14Pruitt, Scott[adm14pruitt.scott@epa.gov]
Cc: Jackson, Ryan (Inhofe)[Ryan_Jackson@inchofe.senate.gov]; Schnare, David[schnare.david@epa.gov]
From: Reeder, John
Sent: Tue 2/21/2017 9:12:06 PM
Subject: NewsLetter TODAY went to ALL EPA employees with Mr. Pruitt's message

From: This Week @ EPA
Sent: Tuesday, February 21, 2017 2:47 PM
To: Mass Mailer <Mass_Mailer@epa.gov>
Subject: This Week @ EPA - February 21, 2017



Scott Pruitt assumes role as EPA Administrator



Oklahoma Attorney General Scott Pruitt was confirmed and sworn in as EPA's 14th administrator on Feb. 17.

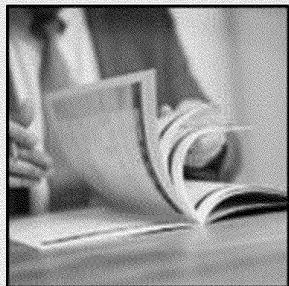
Administrator Pruitt believes promoting and protecting a strong and healthy environment is one of the lifeblood priorities of the government, and EPA is a vital part of that mission.

As Administrator, Pruitt will lead EPA in a way that our future generations inherit a better and healthier environment while advancing America's economic interests. He is committed to working with the thousands of dedicated public servants at EPA who have devoted their careers to helping realize this shared vision, while faithfully administering environmental laws.

[Read the full version of this story](#) and [watch the video](#) of his first address to EPA staff earlier today.

Hot Topics

EPA announces 2016 Science and Technology Achievement Award winners



EPA recently announced the winners of the 2016 Science and Technology Achievement Awards (STAA). The Agency awarded 21 nominations with Level II and III STAA awards for notably excellent or unusually notable research or technological effort, and 32 nominations with honorable mentions.

The [STAA program](#) sponsored by the Office of Research and Development (ORD) in cooperation with EPA's Science Advisory Board recognizes EPA employees who have made outstanding contributions to the advancement of science and technology through their publication of peer-reviewed articles or books. Science is the foundation of decision-making at EPA, and the 2016 STAA award winners reflect the Agency's long history of scientific excellence.

[View the 2016 STAA winners.](#)

Celebrating African American History Month

EPA African American Career Profiles

As part of the Agency's recognition of African American History Month, we're proud to showcase the [career profiles of African Americans at EPA](#). This page highlights the work of a small sample of the talented group of African American employees at the Agency. The page includes:

- [Beverly Banister](#), Director Air, Pesticides and Toxics Management Division, Region 4
- [Carlton Eley](#), Senior Environmental Protection Specialist, HQ
- [Shakeba Carter-Jenkins](#), Public Engagement Specialist, HQ
- [Carlos Evans](#), Attorney Advisor, HQ
- [Leslye Fraser](#), Environmental Appeals Judge, HQ

If you would like to be included on the African American employee profiles page, please contact Jessica Ann Orquina, Associate Director, Office of Web Communications at orquina.jessica@epa.gov or 202-564-0446.

Commit to quit tobacco during Great American Spit Out



Kick the smokeless tobacco habit. Join the Great

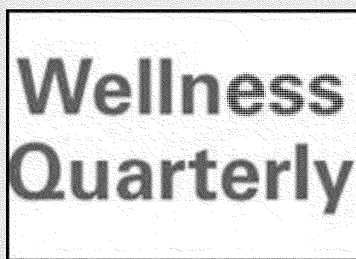
American Spit Out Feb. 23, and set your quit date. Did you know smokeless tobacco is no healthier than smoking? It can cause oral, pancreatic, and esophageal cancer along with white leathery patches inside the mouth, stained teeth, and bad breath.

There has never been a better time to quit tobacco. All Federal Employees Health Benefits plans offer coverage to help you quit once and for all. Check out the [Office of Personnel Management - Quit Smoking Initiative](#). The benefit covers treatment for all forms of tobacco use along with four tobacco cessation counseling sessions of at least 30 minutes for at least two quit attempts per year. This includes proactive telephone counseling, group counseling, and individual counseling.

Many resources are available to help you kick the habit. The Centers for Disease Control and Prevention (CDC) [QuitGuide](#) is a free app that helps you understand your tobacco use patterns and build the skills needed to become and stay tobacco free. The QuitGuide even offers the ability to track cravings by time of day and location.

For more information about kicking the habit, visit the CDC's [Smoking & Tobacco Use](#) site or the [Smokefree.gov](#) site.

New issue of Wellness Quarterly now available



Read the latest [Wellness Quarterly](#) to catch up on new health and wellness resources, tips, and events. In this edition, find out how to:

- ✓• Step up your fitness;
- ✓• Drive safely on winter roads;
- ✓• Arrange an ergonomic workstation; and
- ✓• Reduce your risk of cancer.

Wellness Quarterly is published by the Safety and Sustainability Division within the Office of Administration and Resources Management (OARM).

Key Dates



Click on each event below to get more details.

Click on the "Add to Calendar" button to add an event to your Outlook calendar.

If you see a log-in screen, please click on your EPA email, or if prompted, enter your email and network password.

Video Spotlight

EPA - Youth and the Environment

EPA's Youth and the Environment Program provides low income high school students with summer opportunities to gain exposure to a wide range of environmental careers including: wastewater treatment operators, wet weather management (combined sewer and sanitary sewer overflows), recycling, energy management, hazardous waste management, and ecology.

Happening This Week:

Feb. 21: How to Use Online CFRs webinar

ADD TO CALENDAR

Coming Soon:

Mar. 2: Lean Overview Webinar

ADD TO CALENDAR

Apr. 6: Lean Overview Webinar

ADD TO CALENDAR



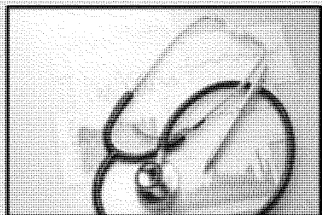
(video length 4:33)

Health & Wellness

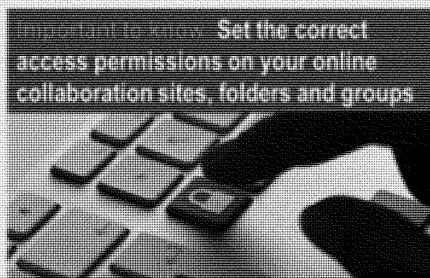
Learn the warning signs of a stroke

IT Corner

Use Office 365 to share, collaborate while protecting EPA information



According to the Centers for Disease Control and Prevention, stroke is the fifth leading cause of death in the United States and is a major cause of adult disability. Most strokes occur when the artery that supplies blood to the brain is blocked, which causes brain cells to die.



Did you know that access to many of the Office 365 tools, like SharePoint sites, One Drive, and Office 365 groups, is managed through **access permissions**?

Common warning signs and symptoms of a stroke are:

- Sudden trouble talking or understanding speech
- Sudden trouble walking, dizziness or loss of balance
- Sudden numbness in the face, arm or leg, especially on one side of the body
- Nausea or vomiting
- Drowsiness

• ☐ ☐ ☐ ☐ ☐ ☐ ☐ In SharePoint, Site Owners can control who can access (view only) or contribute and edit the site and its contents.

• ☐ ☐ ☐ ☐ ☐ ☐ ☐ In One Drive, you can post documents for your own individual use or give access (view only or edit) to these documents to other individuals or groups.

• ☐ ☐ ☐ ☐ ☐ ☐ ☐ In Office 365 Groups, you can use a group that is private (only those who are added to the group can see its contents) or public (all EPA users can see the contents of a group).

Immediately call 911 if you or someone around you experiences these symptoms. For more information, please visit EPA's heart health site.

Regardless of which tools you use, it is important to make sure sensitive documents and business information are protected by setting the appropriate permissions to your sites, groups, files and folders.

We would love to hear your feedback about this newsletter. Please contact us at: internalcomms@epa.gov or <http://intranet.epa.gov/internalcomms>

Looking for previous editions of the Newsletter? Go to the [Newsletter Archive](#)

Banner image credit: David Iacono, Region 3, taken from New Jersey.

To: Flynn, Mike[Flynn.Mike@epa.gov]; Hale, Michelle[hale.michelle@epa.gov]; Hull, George[Hull.George@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Schnare, David[schnare.david@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
From: Gaines, Cynthia
Sent: Fri 3/3/2017 12:29:34 AM
Subject: Daily Reading File: March 2, 2017j
[Daily Reading File.3.2.17a.pdf](#)



Correspondence Management System

Control Number: AX-17-000-5016

Printing Date: March 02, 2017 03:48:47



Citizen Information

Citizen/Originator: Mehan, G. Tracy

Organization: American Water Works Association

Address: 1300 I Street, NW, Washington, DC 20005

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5016

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Mar 16, 2017

of Extensions: 0

Letter Date: Feb 27, 2017

Received Date: Feb 27, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: EML (E-Mail)

Priority Code: Normal

Signature: AA-OW-Assistant Administrator - Signature Date: N/A
OW

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Urge support for federal investment in drinking water infrastructure and related matters in FY 2018 budget

Instructions: AA-OW-Prepare draft response for signature by the Assistant Administrator for OW

Instruction Note: N/A

General Notes: CMS caused a delay in processing. It was forwarded by email on 2/27, but was not in the CMS drop-down for processing until 3/1 (jl)

CC: Derek Threet - AO-IO
OCFO - OCFO -- Immediate Office
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OW	Mar 1, 2017	Mar 16, 2017	N/A
Instruction: AA-OW-Prepare draft response for signature by the Assistant Administrator for OW					
Wanda Fields	OW	OW-OGWDW	Mar 1, 2017	Mar 14, 2017	N/A
Instruction: CC: SHAPIIRO, BEST-WONG, PECK, LOUSBERG					

Supporting Information

Supporting Author: N/A



**American Water Works
Association**

Dedicated to the World's Most Important Resource™

Government Affairs Office
1300 Eye Street NW
Suite 701W
Washington, DC 20005-3314
T 202.628.8303
F 202.628.2846

February 27, 2017

The Honorable Mick Mulvaney, Director
Office of Management and Budget
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Room 252
Washington, DC 20503

The Honorable Scott Pruitt, Administrator
Environmental Protection Agency
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Director Mulvaney and Administrator Pruitt:

On behalf of the 50,000 members of the American Water Works Association (AWWA), including over 4,000 utility members, I am writing you to urge your support for federal investment in our nation's drinking water infrastructure. Water infrastructure is vital to our nation's well-being. It protects public health and the environment, supports local and national economies, protects us from fires, creates jobs and brings us a higher quality of life. As the process of creating the federal budget for Fiscal Year 2018 begins, AWWA urges you to take the following actions:

- ☐ Fund the Water Infrastructure Finance and Innovation Act (WIFIA) at \$45 million, the level authorized in the Water Resources Reform and Development Act of 2014 (P.L. 113-121);
- ☐ Fund the Drinking Water State Revolving Fund (DWSRF) at \$1.8 billion.
- ☐ Maintain funding at the levels found in the Further Continuing and Security Assistance Appropriations Act of 2017 (P.L. 114-254) for research that assists the Environmental Protection Agency (EPA) in preparing sound regulations related to drinking water; and
- ☐ Maintain funding at levels found in the Further Continuing and Security Assistance Appropriations Act of 2017 (P.L. 114-254) for EPA's and Office of Ground Water and Drinking Water (OGWDW) within the Office of Water (OW) to support development of sound regulations related to drinking water.

WIFIA and the DWSRF, in combination, can help communities of all sizes rebuild and repair their drinking water infrastructure. WIFIA allows the federal government to play an important role in facilitating increased local spending on infrastructure by lowering the cost of capital for water infrastructure projects. Based on estimates from the Senate Environment and Public Works Committee, Congressional appropriations could be leveraged at a ratio of 67:1. **For example, if WIFIA were to receive the \$45 million authorized for FY 2018 under WRRDA 2014, the program**

could cover \$3.015 billion in credit assistance. These attributes make WIFIA an ideal vehicle for meeting President Trump's goal to invest in the nation's water infrastructure.

Both WIFIA and the DWSRF help communities in the effort to meet the more than \$1.3 trillion price tag for needed water infrastructure investments. Not only does investing in water infrastructure protect public health, it charges local economies and creates jobs in our communities. The US Department of Commerce Bureau of Economic Analysis (BEA) estimates that for every dollar spent on water infrastructure, about \$2.62 is generated in the private economy. And for every job added in the water workforce, the BEA estimates 3.68 jobs are added to the national economy.

Meanwhile, the DWSRF program is a shining example of partnership between the federal government and the states. Since 1997, federal investment of over \$19.1 billion has been matched with more than \$32.5 billion from the states to provide more than 12,800 assistance agreements to help water systems improve and modernize their systems.

As you know, the work that EPA does to protect public health in regards to drinking water is based in sound research and science. Ensuring that funding to continue this important research, at minimum at the current funding levels found in the continuing resolution passed late last year, will help EPA make informed regulatory determinations on issues with our nation's drinking water. For example, in October of last year the Water Research Foundation (WRF) published "Lead and Copper Corrosion: An Overview of WRF Research," which provided summaries and background on the 41 published and six ongoing research projects that the Foundation has undertaken since 1990. Congress created the National Priorities Water Research grant program to ensure that EPA sponsors extramural research on sensible topics such as lead contamination. Providing federal funding for this national program and other water-related research will help EPA make determinations that benefit public health and drinking water utilities.

Finally, providing funding for OW and OGWDW to help the agency develop and implement, sound regulatory actions with adequate stakeholder engagement is fundamental to the work of EPA, the state primacy agencies, and stakeholders throughout the water sector. Under the Safe Drinking Water Act (SDWA), there has been a history of collaborative rulemakings that have handled difficult risk management challenges. Going forward, the existing Six-Year Review process has brought up several tough issues that will require a concerted effort to engage stakeholders at multiple levels and jurisdictions. A commitment from this administration to ensure that the funding necessary to tackle these challenges is available will safeguard the drinking water regulatory process and certify the involvement of all essential parties.

AWWA would be happy to discuss the WIFIA program, DWSRF, or other drinking water issues with you further. Please feel free to call me or Sean Garcia on my staff (202-326-6122) if you have any questions or need further information.

Yours Sincerely,

A handwritten signature in black ink that reads "G. Tracy Mehan, III". The signature is fluid and cursive, with the last name "Mehan" being the most prominent part.

G. Tracy Mehan, III
Executive Director of Government Relations
American Water Works Association



Correspondence Management System

Control Number: AX-17-000-5017

Printing Date: March 02, 2017 04:04:10



Citizen Information

Citizen/Originator: Hall, John C.

Organization: Hall & Associates
Address: 1620 I Street, NW, Washington, DC 2006-4033

Hoye, Thomas C.

Organization: City of Taunton
Address: 141 Oak Street, Taunton, MA 02780

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5017 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Mar 17, 2017 **# of Extensions:** 0
Letter Date: Feb 27, 2017 **Received Date:** Feb 22, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: EML (E-Mail) **Priority Code:** Normal
Signature: AA-OW-Assistant Administrator - Signature Date: N/A
OW
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Request for Agency Agreement to Mediation/Settlement Discussions in City of Taunton v. EPA (1st Cir. 16-2280); Request for Peer Review of EPA Region 1's Unprecedented Use of the Sentinel Method to Impose Stringent Nitrogen Limitations
Instructions: AA-OW-Prepare draft response for signature by the Assistant Administrator for OW
Instruction Note: N/A
General Notes: CMS caused a delay in processing. It was forwarded by email on 2/27; it was not in the CMS drop-down for processing until 3/1 (jl)
CC: OCIR - Office of Congressional and Intergovernmental Relations
OGC - Office of General Counsel -- Immediate Office
OPA - Office of Public Affairs
OW - Office of Water -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OW	Mar 2, 2017	Mar 17, 2017	N/A
	Instruction: N/A				
Wanda Fields	OW	OW-OWM	Mar 2, 2017	Mar 15, 2017	N/A
	Instruction: CC: SHAPIRO, BEST-WONG, PECK, LOUSBERG				

Mon Feb 27 17:06:49 EST 2017
Pruitt.Scott@epamail.epa.gov
Fw: Request for Agency Agreement to Mediation/Settlement Discussions in City of Taunton v. EPA (1st Cir. 16-2280)
To: CMS.OEX@epamail.epa.gov

From: John Hall <jhall@hall-associates.com>
Sent: Wednesday, February 22, 2017 11:37 AM
To: Pruitt, Scott; Benton, Donald; Schnare, David
Cc: Buckley, Sarah (ENRD); Kaplan, David (ENRD); thoye@taunton-ma.gov; Daniel de Abreu
Subject: Request for Agency Agreement to Mediation/Settlement Discussions in City of Taunton v. EPA (1st Cir. 16-2280)

Dear Administrator Pruitt:

Congratulations on your confirmation as the new Trump Administration head of EPA. Your arrival could not have come at a more opportune time for the City of Taunton, Massachusetts.

~~Circuit be put in abeyance, to allow settlement discussion of the~~
The City of Taunton is requesting that their permit challenge pending before the 1st Circuit be put in abeyance, to allow settlement discussion of the issues with your staff to occur. As noted in the attached correspondence from the Taunton Estuary Municipal Coalition, EPA’s permitting action grossly conflicted with the accepted, peer reviewed scientific methods for evaluating nutrient effects and failed to follow the “rule of law”. In particular, the extreme nitrogen reduction mandate and other limits imposed on this economically depressed city were a result of an environmental agenda to regulate more restrictively, regardless of the facts.

We are confident that a frank discussion of the events that transpired and a fair review of the science and regulatory requirements applicable to such cases, would result in an agreement that this permit action needs to be withdrawn and reconsidered. If your Office would inform the Justice Department and the City that the Agency is agreeable to putting the matter in abeyance, pending settlement discussions(e.g., alternative dispute resolution), the appropriate motion could be filed with the 1st Circuit. Such action would allow the City’s limited resources to be directed at a productive resolution of the matter.

The City of Taunton looks forward to your Office’s response. Thank you for your consideration of this request.

John

John C. Hall
Hall & Associates
1620 I Street, NW, Suite 701
Washington, DC 20006
Phone: 202-463-1166
Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

Taunton Estuary Municipal Coalition

February 9, 2017

Via Email and First Class US Mail

Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Request for Peer Review of EPA Region 1's Unprecedented Use of the Sentinel Method to Impose Stringent Nitrogen Limitations

Dear Administrator Pruitt:

On behalf of the major cities discharging to the Taunton Estuary (Taunton and Fall River) and New Bedford, I am submitting this letter requesting your intervention and review of a series of unprecedented and scientifically indefensible regulatory decisions made by EPA Region 1 an attempt to impose extremely stringent nitrogen limitations on our facilities. These NPDES permit actions represent quintessential examples of decision making based on EPA policy rather than sound science and environmental need. If left in place, these new mandates will impose well over \$100 million in new wastewater and stormwater compliance costs for our cities. Given the new administration's desire to eliminate wasteful regulation, we are hoping to obtain your assistance in staying further permit appeal proceedings and objectively reviewing the scientific concerns we had raised previously, which were all disregarded by the prior administration. The following provides some brief background on the matter.

In 2015, EPA finalized a permit imposing "state of the art" nitrogen limitations on Taunton's wastewater treatment facility after a protracted dispute regarding the need for such limitations. EPA issued a similar permit for Brockton in January, 2017, and intends similar mandates for New Bedford and Fall River, but due to ongoing appeals has not finalized those actions. EPA Region I imposed the stringent nutrient limitations even though:

1. The Taunton Estuary is not identified as nutrient impaired;

2. Three nationally recognized experts (including Dr. Steven Chapra, Tufts University of international renown) stated that EPA's novel calculation procedure (known as the "Sentinel Method") was not scientifically defensible and would clearly give an erroneous result;
3. System data, collected by Dr. Brian Howes in 2004-2006, confirmed that the stringent nitrogen limitations would not materially improve dissolved oxygen levels (the stated concern of EPA's nutrient reduction mandate), and;
4. EPA's analysis ignored all of the other system improvements occurring since 2004 that EPA itself had mandated to improve water quality in the system (including the closure of major power plants, reduction of combined sewer overflows and nutrient discharges by major Rhode Island facilities).

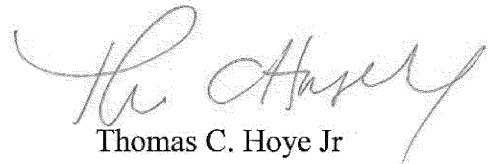
Individually, each of these errors should have warranted a remand of the permit. Even EPA Headquarters had confirmed, under FOIA, that the Region's novel procedure for claiming stringent nutrient limits were required was never peer reviewed or determined by anyone to be scientifically defensible. (Attachment 1) Nonetheless, EPA Headquarters refused a request from the *Center for Regulatory Reasonableness* to peer review the new method (in derogation of the federal Peer Review Handbook). (Attachment 2) EPA's Environmental Appeal Board (EAB) rejected all technical arguments and actively prevented consideration of the reports from independent experts confirming the Region's approach was technically baseless (See, Attachment 3, Letter of Dr. Brian Howes, Dartmouth- SMAST, who confirmed EPA was misapplying his data in reaching its conclusions). Left with little other choice, the City of Taunton appealed the EAB's decision to the First Circuit Court of Appeal (*see City of Taunton v. EPA*, (1st Cir. 16-2280)) and filed a permit modification request with EPA Region 1 to properly consider the information the EAB refused to assess in supporting EPA's permit action. Those actions are presently pending.

Requested Action

The cities believe that all permitting and appeal actions should be stayed, pending a complete scientific review of the Region's actions. An independent peer review of EPA's untested "Sentinel Method" should occur, as required by the federal Peer Review Policy, given the enormous local resources at stake. It is our belief that no group of credible scientists would possibly find this approach to be "scientifically defensible" which is why the prior administration refused to allow such review. In any event, should such review determine the Region's actions are, in fact, scientifically defensible and accurately reflect the impact of nitrogen on the DO regime of the Taunton Estuary, we would be willing to live with that result, knowing our monies will be well spent.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Th. Hoye Jr.", written in dark ink.

Thomas C. Hoye Jr

Mayor

Enclosures

cc. David Schnare, USEPA
Don Benton, USEPA
Mayor Correia, Fall River
Mayor Mitchell, New Bedford



Correspondence Management System

Control Number: AX-17-000-5421

Printing Date: March 02, 2017 02:05:29



Citizen Information

Citizen/Originator: Adee, Bret

Organization: Pollinator Stewardship Council, Inc.
Address: P.O. Box 304, Perkinston, MS 39573

Brandi, Gene

Organization: American Beekeepers Federation
Address: 15346 South Johnson Road, Los Banos, CA 93635

Colopy, Michele

Organization: Pollinator Stewardship Council, Inc.
Address: 1624 Idlewood Avenue, Akron, OH 44313

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number:	AX-17-000-5421	Alternate Number:	N/A
Status:	Pending	Closed Date:	N/A
Due Date:	Mar 17, 2017	# of Extensions:	0
Letter Date:	Feb 27, 2017	Received Date:	Mar 2, 2017
Addressee:	AD-Administrator	Addressee Org:	EPA
Contact Type:	EML (E-Mail)	Priority Code:	Normal
Signature:	AA-OCSP-PP-Assistant Administrator - OCSP-PP	Signature Date:	N/A
File Code:	404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.		
Subject:	DRF - Welcome to the EPA from the Bee Industry		
Instructions:	AA-OCSP-PP-Prepare draft response for signature by the Assistant Administrator for OCSP-PP		
Instruction Note:	N/A		
General Notes:	The letter has also been sent to Aaron Dickerson for potential meeting per Brian Hope (jl)		
CC:	OPA - Office of Public Affairs Susan Burden - AO-IO		

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OCSP-PP	Mar 2, 2017	Mar 17, 2017	N/A
Instruction: AA-OCSP-PP-Prepare draft response for signature by the Assistant Administrator for OCSP-PP					

Supporting Information

Supporting Author: N/A

Pollinator Stewardship Council
1624 Idlewood Ave., Akron, OH 44313
www.pollinatorstewardship.org
832-727-9492

February 27, 2017

The Honorable Mr. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building, MC 1101A
1200 Pennsylvania Ave., NW
Washington, D.C. 20004

Dear Mr. Pruitt,

Please accept our congratulations on your confirmation as EPA Administrator. You are in a position that greatly affects Americans—their health, the environment, and the food supply. Through the implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), you impact many industries that protect and maintain the health of the American food supply. As you stated in your address to EPA civil servants Feb. 21, 2017 (<https://www.c-span.org/video/?424362-1/administrator-scott-pruitt-addresses-epa-employees>), the average service of staff is nineteen years. During that time, pollinator protections from pesticide exposure consisted of the longstanding label protection language "*Do not apply to blooming crops or weeds.*" However, that protective label language is being removed against the expressed concerns of beekeepers. As you defined your vision for the function of EPA, you want EPA to “learn, listen, be problem solvers, make decisions, and lead.” You stated “process matters,” and “regulators should give certainty to those they regulate.”

Weakened protections and increased exposures to poisons is a trend which must be reversed if pollinators are to be made healthy. Beekeepers want to find answers to the critical issues. EPA’s recent Rulemaking decisions will have a deleterious effect upon the bee industry. We look forward to sharing the rest of our story with you about the bee industry which pollinates \$30B in US crops annually.

Beekeepers value deeply the relationships they have developed over the years with farmers, ranchers, and specialty crop producers. A dedicated group of beekeepers, comprised of experts in the field of pesticide hazards, working closely with scientific advisers and other groups who are

interested in solving the problem of unsustainable colony losses by evaluating all stressors, including pesticides, is a formula for success.

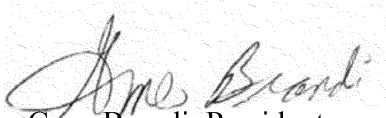
We would be pleased to get together with you to find answers to the challenging issues of pollinator health and a sustainable bee industry.

The collaborative effort of managed and native pollinators supporting our food supply is the same collaborative effort the honey producers and crop pollination industry provide for a vital and sustainable agricultural system. We look forward to working with you.

Sincerely,



Bret Adee, President
Pollinator Stewardship Council



Gene Brandi, President
American Beekeepers Federation





Correspondence Management System

Control Number: AX-17-000-5455

Printing Date: March 02, 2017 04:35:35



Citizen Information

Citizen/Originator: Pence, Randall G.

Organization: American Association of Radon Scientists and Technologists
Address: 475 South Church Street, Hendersonville, NC 28792

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5455 **Alternate Number:** N/A
Status: Pending **Closed Date:** N/A
Due Date: Mar 16, 2017 **# of Extensions:** 0
Letter Date: Mar 1, 2017 **Received Date:** Mar 2, 2017
Addressee: AD-Administrator **Addressee Org:** EPA
Contact Type: LTR (Letter) **Priority Code:** Normal
Signature: AA-OCFO-Chief Financial Officer **Signature Date:** N/A
File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Expressing strong support for funding both the Radon Program and the State Indoor Radon Grant (SIRG) program in EPA's FY18 Budget
Instructions: AA-OCFO-Prepare draft response for signature by the Chief Financial Officer
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OAR - Office of Air and Radiation -- Immediate Office
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
StephanieN Brown	OEX	OCFO	Mar 2, 2017	Mar 16, 2017	N/A
Instruction: AA-OCFO-Prepare draft response for signature by the Chief Financial Officer					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Wednesday, March 01, 2017

The Honorable Scott Pruitt
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, DC 20460

Dear Administrator Pruitt,

We are writing to express strong support for funding both the Radon Program and the State Indoor Radon Grant (SIRG) program in EPA's FY18 Budget.

Support for radon testing and mitigation is a perfect fit for EPA action and the Trump Administration.

The Radon Program and SIRG are prime examples of "cooperative federalism." EPA supports the states and tribes closely to deliver radon services. States and tribes need and welcome EPA radon support.

EPA's Radon Program and SIRG help states protect public health in highly meaningful ways, promoting radon testing and mitigation. Radon is the Number 1 indoor environmental killer in America. According to the National Research Council, 21,000 Americans die every year due to radon-induced lung cancer. The EPA Radon Program and SIRG are currently the only infrastructure that exists in the United States to prevent radon-induced lung cancer.

Radon testing and mitigation provide American jobs among radon scientists and technologists, home inspectors, mitigators and more. If these vital EPA programs are cut, state, tribal and territorial programs will close and most consumer outreach on the state and local level will cease. EPA's technical infrastructure for a radon's radioactive reference will cease as well.

SIRG grantee services include public awareness, referrals for testing and mitigation, outreach to the real estate community and public health officials, strategic data collection, technical support for building officials. The cost-benefit of radon risk reduction by state programs is tremendous.

We hope that you will ensure that full continued funding for the Radon Program and the State Indoor Radon Grant Program will be retained in the EPA FY18 Budget. Should you wish further information please contact Peter Hendrick, aarstdirector@gmail.com, or (603) 574-4682.

Sincerely,

American Association of Radon Scientists and Technologists
American Society of Home Inspectors
Bonnie J. Addario Lung Cancer Foundation
CanSAR - Cancer Survivors Against Radon
Caring Ambassadors Program
Conference of Radiation Control Program Directors
Free to Breathe

Leech Lake Band of Ojibwe - Air Quality Program
Live Lung
Lung Cancer Alliance
Lung Cancer Initiative
Lungevity Foundation
Midwest Universities Radon Consortium
National Center for Healthy Housing
National Environment Health Association



Correspondence Management System

Control Number: AX-17-000-5451

Printing Date: March 02, 2017 05:35:37



Citizen Information

Citizen/Originator: Wehrum, William L.

Organization: Utility Air Regulatory Group

Address: Address Unknown

Tolsdorf, Peter

Organization: American Petroleum Institute Chamber of Commerce of the United States of America

Address: 1220 L St NW, Washington, DC 20005

Hoverman, Taylor

Organization: American Fuel & Petrochemical Manufacturers

Address: 1667 K Street NW, Washington, DC 20006

Hulse, Leslie A

Organization: American Chemistry Council

Address: 700 2nd Street, NE, Washington, DC 20002

Poling, Jan A.

Organization: American Forest & Paper Association

Address: 1111 Nineteenth Street NW, Washington, DC 20036

Moskowitz, Richard S.

Organization: American Fuel and Petrochemical Manufacturers

Address: 1667 K Street NW, Washington, DC 20006

Riegel, Quentin

Organization: National Association of Manufacturers

Address: 733 10th Street, NW, Washington, DC 20001

Karcz, Melissa

Organization: Hogan Lovells

Address: Columbia Square, 555 Thirteenth Street NW, Washington, DC 20004

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5451

Status: Pending

Due Date: Mar 16, 2017

Letter Date: Feb 28, 2017

Addressee: AD-Administrator

Contact Type: EML (E-Mail)

Signature: AA-OLEM-Assistant
Administrator-OLEM

Alternate Number: N/A

Closed Date: N/A

of Extensions: 0

Received Date: Mar 2, 2017

Addressee Org: EPA

Priority Code: Normal

Signature Date: N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Petition for Reconsideration and Request for Agency Stay Pending Reconsideration and Judicial Review of Final Rule entitled Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act

Instructions: AA-OLEM-Prepare draft response for signature by the Assistant Administrator for OLEM



Correspondence Management System

Control Number: AX-17-000-5451

Printing Date: March 02, 2017 05:35:37



Instruction Note: N/A
General Notes: N/A
CC: Eileen Naples - AO-IO
OGC - Office of General Counsel -- Immediate Office
OP - Office of Policy
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
StephanieN Brown	OEX	OLEM	Mar 2, 2017	Mar 16, 2017	N/A
Instruction: AA-OLEM-Prepare draft response for signature by the Assistant Administrator for OLEM					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

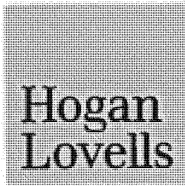
Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
StephanieN Brown	OEX	Assign OLEM as lead office	Mar 2, 2017

Comments

Commentator	Comment	Date
No Record Found.		



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

February 28, 2017

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

**RE: Petition for Reconsideration and Request for Agency Stay Pending
Reconsideration and Judicial Review of Final Rule entitled *Accidental Release
Prevention Requirements: Risk Management Programs Under the Clean Air Act***

Dear Administrator Pruitt:

Please find enclosed a petition for reconsideration and request for stay for the U.S. Environmental Protection Agency's final rule, *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, Section 112(r)(7), 82 Fed. Reg. 4594, published in the Federal Register on January 13, 2017. This petition and request is filed on behalf of the RMP Coalition, consisting of the American Chemistry Council, the American Forest & Paper Association, the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the Chamber of Commerce of the United States of America, the National Association of Manufacturers, and the Utility Air Regulatory Group.

Please contact me with any questions you may have.

Sincerely,

Justin Savage

Partner
justin.savage@hoganlovells.com
D 202.637.5558

cc: Michael Flynn, Acting Deputy Administrator, EPA
John Reeder, Acting Chief of Staff, EPA
Barry Breen, Acting Assistant Administrator, EPA Office of Land and Emergency
Management

Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia. "Hogan Lovells" is an international legal practice that includes Hogan Lovells US LLP and Hogan Lovells International LLP, with offices in: Alicante Amsterdam Baltimore Beijing Brussels Caracas Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hanoi Ho Chi Minh City Hong Kong Houston Johannesburg London Los Angeles Luxembourg Madrid Mexico City Miami Milan Minneapolis Monterrey Moscow Munich New York Northern Virginia Paris Perth Philadelphia Rio de Janeiro Rome San Francisco São Paulo Shanghai Silicon Valley Singapore Sydney Tokyo Ulaanbaatar Warsaw Washington DC Associated offices: Budapest Jakarta Shanghai FTZ Zagreb. Business Service Centers: Johannesburg Louisville Legal Service Center: Birmingham. For more information see www.hoganlovells.com

WDC - 029016/000012 - 10055186 v1

ED_001612_00030114-00016

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In re: Accidental Release Prevention) Docket No. EPA-HQ-OEM-0725
Requirements: Risk Management Programs)
Under the Clean Air Act)

PETITION FOR RECONSIDERATION AND STAY

Pursuant to Section 307(d)(7)(B) of the Clean Air Act (“CAA” or the “Act”)¹ and Sections 553 and 705 of the Administrative Procedure Act (the “APA”),² the American Chemistry Council (“ACC”), the American Forest & Paper Association (“AF&PA”), the American Fuel & Petrochemical Manufacturers (“AFPM”), the American Petroleum Institute (“API”), the Chamber of Commerce of the United States of America (the “Chamber”), the National Association of Manufacturers (“NAM”), and the Utility Air Regulatory Group (“UARG”) (collectively the “Coalition”) hereby petition the Administrator of the U.S. Environmental Protection Agency (“EPA” or the “Agency”) to reconsider and rescind its final rule entitled *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 82 Fed. Reg. 4594 (Jan. 13, 2017) (“RMP rulemaking” or “Final Rule”), and to stay the effective date of the Final Rule.³

The Coalition shares EPA's goal of promoting process safety. EPA's data shows that the pre-existing RMP regulation promoted safety, with a significant decline in the rate of accidental releases and incidents in the last twenty years. Unfortunately, the Final Rule undermines safety, creates significant security risks, and does nothing to further prevent criminal acts that threaten facilities, such as the sabotage that led to the tragedy in West, Texas. We stand ready to work

¹ 42 U.S.C. § 7407. EPA promulgated the Final Rule under its authority in Section 112(r) of the CAA to issue rules to prevent, detect, and respond to accidental releases of regulated substances. CAA Section 112(r)(7)(E) provides that regulations or requirements under that subsection are to “be treated as a standard in effect under [CAA Section 112] subsection (d),” which in turn are subject to the rulemaking and review procedures of Section 307(d). Thus, rulemaking and petition requirements of Section 307(d) apply to regulations issued under Section 112(r).

5 U.S.C. §§ 553(e), 705.

³ Due to the imminent compliance deadlines for certain requirements in the RMP Rule, the Coalition submits this initial petition today and reserves the right to supplement with additional material.

with EPA, OSHA and other federal stakeholders to find ways to improve chemical process safety, assist local emergency responders in responding to accident releases, and safeguard the communities living around our member companies' facilities.

The objections raised in this petition were either impracticable to raise during the comment period or arose subsequent to the end of the comment period and are of central relevance to the Final Rule. Section 307(d)(7)(B) of the CAA thus requires EPA to "convene a proceeding for reconsideration of the rule" and impart all the procedural rights that "would have been afforded had the information been available at the time the rule was proposed."⁴

The Coalition submits this Petition on the grounds that the Final Rule was procedurally deficient so as to deprive commenters of effective notice and opportunity to comment; that circumstances changed—and undermined the factual predicate for the rule—when the comment period was nearly over such that it was impracticable to comment on how those circumstances impacted EPA's proposed provisions; and that EPA introduced new provisions or rationales in the Final Rule for which commenters had no notice and which were not a logical outgrowth from what was proposed.

An administrative stay is appropriate and necessary while the Agency considers and addresses the numerous flaws in the Final Rule. Under Section 307(d) of the Act, EPA may grant a 90-day stay pending reconsideration, and we respectfully request that it do so. The Coalition also requests a stay under Section 705 of the APA pending resolution of the petition for review that the Coalition is filing in the U.S. Court of Appeals for the D.C. Circuit challenging the lawfulness of the Final Rule. A stay under APA Section 705 is not subject to the three month limitation that restricts stays under CAA Section 307(d) while petitions for reconsideration are pending, and may be issued by EPA while judicial review is pending if "justice so requires." EPA and the courts have determined that "justice so requires" a stay under APA Section 705 where the party filing the petition for review is likely to succeed on the merits, the party will incur irreparable harm without a stay, other parties will not be harmed by staying the rule, and it is in the public interest to stay the effective date of the rule.

Justice so requires a stay here. The Coalition is likely to prevail on the merits of its challenges to the Final Rule due to its numerous procedural and substantive flaws. Staying the Final Rule will prevent irreparable harm to the Coalition's member companies and will serve the public interest. The Final Rule raises *significant security concerns* and compliance issues that will cause irreparable harm to the Coalition members. The Final Rule, for example, compels facilities to make available sensitive information about covered processes that could expose vulnerabilities to terrorists and others who may target refineries, chemical plants and other facilities. Certain provisions, such as the requirement to audit "each covered process" in a facility's compliance audit, impose costly and burdensome obligations on facilities immediately upon the Final Rule becoming effective. The Final Rule should be stayed to grant EPA, the Department of Homeland Security ("DHS"), the Federal Bureau of Investigation ("FBI"), and other relevant agencies the opportunity to engage with stakeholders to discuss appropriate

⁴ 42 U.S.C. § 7607(d)(7)(B).

protections to avert potential security risks. Because of imminent deadlines in the rule, the Coalition requests that EPA act as expeditiously as possible.

BACKGROUND

In the wake of the 2013 ammonium nitrate explosion at a fertilizer plant in West, Texas, President Obama issued Executive Order 13650 directing EPA, the Occupational Safety and Health Administration (“OSHA”), and DHS, in connection with other agencies, to collaborate in order to consider changes that could be made to prevent future similar incidents.⁵ Executive Order 13650 required EPA to “review the chemical hazards covered by the RMP . . . and determine if the RMP . . . can and should be expanded to address additional regulated substances and types of hazards.”⁶ Once such additional regulated substances and types of hazards were identified, EPA was directed to “develop a plan, including a timeline and resource requirements, to expand, implement, and enforce the RMP . . . in a manner that addresses the additional regulated substances and types of hazards.”⁷

EPA accordingly issued a Request for Information in July 2014 and subsequently published a proposed rule, entitled *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 81 Fed. Reg. 13,638 (Mar. 14, 2016) (“Proposed Rule”), to amend its RMP regulations on March 14, 2016.

Though ostensibly intended to address the Executive Order directive and the West, Texas explosion, EPA instead used this opportunity to significantly expand its authority and increase the burden of the RMP requirements on regulated industries without squarely addressing the conditions giving rise to the West, Texas explosion. For example, the Proposed Rule included provisions that would require facilities use third parties to conduct compliance audits after any reportable release or when an implementing agency required it due to “substantial noncompliance.” In connection with this requirement, EPA proposed to severely limit who might

⁵ The government has since determined that the explosion was the result of an intentional criminal act rather than an accidental release. See ATF Announces \$50,000 Reward in West, Texas Fatality Fire, (May 11, 2016), available at <https://www.atf.gov/news/pr/atf-announces-50000-reward-west-texas-fatality-fire>.

⁶ Exec. Order No. 16,350; 78 Fed. Reg. 48,029, *Improving Chemical Facility Safety and Security* (Aug. 1, 2013) (emphasis added). Notably, ammonium nitrate is not a covered substance under the RMP Final Rule. See Final Rule, 82 Fed. Reg. 4602.

⁷ *Id.*; see also Office of the Press Secretary, White House, Fact Sheet: Executive Order on Improving Chemical Facility Safety and Security (Aug. 1, 2013), available at <https://obamawhitehouse.archives.gov/the-press-office/2013/08/01/fact-sheet-executive-order-improving-chemical-facility-safety-and-security> (“Today, the President signed an Executive Order to improve the safety and security of chemical facilities and reduce the risks of hazardous chemicals to workers and communities. Chemicals and the facilities that manufacture, store, distribute and use them are essential to our economy. However, incidents such as the devastating explosion at a fertilizer plant in West, Texas in April are tragic reminders that the handling and storage of chemicals present serious risks that must be addressed.”).



Correspondence Management System

Control Number: AX-17-000-5427

Printing Date: March 02, 2017 03:09:36



Citizen Information

Citizen/Originator: Waikar, Anjali

Organization: Natural Resources Defense Council
Address: 20 N. Wacker Drive, Chicago, IL 60606

Hunter, Sherry

Organization: Calumet Lives Matter
Address: Address Unknown

Edwards, Carlyle

Organization: We the People for East Chicago
Address: Address Unknown

Lopez, Maritza

Organization: East Chicago Calumet Coalition Community Advisory Group
Address: 4928 Euclid Avenue, East Chicago, IN 46312

Rivera, Cheryl

Organization: Community Strategy Group
Address: Address Unknown

Henderson, Samuel

Organization: Hoosier Environmental Council
Address: Address Unknown

Love, Sam

Organization: Duneland Environmental Justice Alliance
Address: Address Unknown

Streitelmeier, Charles

Organization: Northwest Indiana Federation of Interfaith Organizations
Address: Address Unknown

Johnson, Willie D.

Organization: The Twin City Minister Alliance of East Chicago
Address: Address Unknown

Grant, Tavis

Organization: Greater First Baptist Church of East Chicago Antioch Network of Church & Ministries
Address: Address Unknown

Gordils, Wanda

Organization: League of United Latin American Citizens Indiana Council
Address: Address Unknown

Bolling-Williams, Barbara

Organization: National Association for the Advancement of Colored People Indiana State Conference Environmental and Climate Justice Program
Address: Address Unknown

Garland, Sheilah

Organization: National Nurses United
Address: Address Unknown

Benfer, Emily



Correspondence Management System

Control Number: AX-17-000-5427

Printing Date: March 02, 2017 03:09:36



Organization: Loyola University Chicago School of Law's Health Justice Project
Address: Address Unknown

Walz, Kate E.

Organization: Sargent Shriver National Center on Poverty Law
Address: Address Unknown

Templeton, Mark

Organization: University of Chicago Law School's Abrams Environmental Law Clinic
Address: Address Unknown

Chizewer, Debbie

Organization: Northwestern University Pritzker School of Law's Environmental Advocacy Clinic
Address: Address Unknown

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number:	AX-17-000-5427	Alternate Number:	N/A
Status:	Pending	Closed Date:	N/A
Due Date:	Mar 17, 2017	# of Extensions:	0
Letter Date:	Mar 2, 2017	Received Date:	Mar 2, 2017
Addressee:	AD-Administrator	Addressee Org:	EPA
Contact Type:	EML (E-Mail)	Priority Code:	Normal
Signature:	RA-R5-Regional Administrator - Region 5	Signature Date:	N/A
File Code:	404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.		
Subject:	DRF - Petition for Emergency Action under the Safe Drinking Water Act, 42 U.S.C. 300i, to Abate the Imminent and Substantial Endangerment to East Chicago, Indiana Residents from Lead Contamination in Drinking Water		
Instructions:	RA-R5-Prepare draft response for signature by the Regional Administrator for Region 5		
Instruction Note:	N/A		
General Notes:	N/A		
CC:	Derek Threet - AO-IO OCSPP - OCSPP - Immediate Office OGC - Office of General Counsel -- Immediate Office OPA - Office of Public Affairs OW - Office of Water -- Immediate Office		

Lead Information

Lead Author: N/A



Correspondence Management System

Control Number: AX-17-000-5427

Printing Date: March 02, 2017 03:09:36



Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	R5	Mar 2, 2017	Mar 17, 2017	N/A
Instruction: DX-Respond directly to this citizen's questions, statements, or concerns					
Gayvonne Gary	R5	Elizabeth Rosado	Mar 2, 2017	Mar 17, 2017	N/A
Instruction: N/A					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
Gayvonne Gary	R5	Kendall Cannon	Mar 2, 2017
Gayvonne Gary	R5	Tracy Jamison	Mar 2, 2017
Gayvonne Gary	R5	Erik Sulej	Mar 2, 2017
Gayvonne Gary	R5	Bertanna Louie	Mar 2, 2017
Gayvonne Gary	R5	Lauren Bumba	Mar 2, 2017
Gayvonne Gary	R5	Ashley Fisseha	Mar 2, 2017
Gayvonne Gary	R5	Tywanna Greene	Mar 2, 2017
Gayvonne Gary	R5	Jesse McDaniel	Mar 2, 2017

History

Action By	Office	Action	Date
Jacqueline Leavy	OEX	Assign R5 as lead office	Mar 2, 2017
Gayvonne Gary	R5	Changed Signature DX-Direct Reply DD-Division Director	Mar 2, 2017
Gayvonne Gary	R5	Accepted the group assignment	Mar 2, 2017
Gayvonne Gary	R5	Assign Elizabeth Rosado as lead	Mar 2, 2017
Gayvonne Gary	R5	Assign Kendall Cannon to support the control	Mar 2, 2017
Gayvonne Gary	R5	Assign Tracy Jamison to support the control	Mar 2, 2017
Gayvonne Gary	R5	Assign Erik Sulej to support the control	Mar 2, 2017
Gayvonne Gary	R5	Assign Bertanna Louie to support the control	Mar 2, 2017
Gayvonne Gary	R5	Assign Lauren Bumba to support the control	Mar 2, 2017
Gayvonne Gary	R5	Assign Ashley Fisseha to support the control	Mar 2, 2017
Gayvonne Gary	R5	Assign Tywana Greene to support the control	Mar 2, 2017
Gayvonne Gary	R5	Assign Jesse McDaniel to support the control	Mar 2, 2017
Jacqueline Leavy	OEX	Changed File Code 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other per	Mar 2, 2017
Jacqueline Leavy	OEX	Changed Signature DD-Division Director RA-R5-Regional Administrator - Region 5	Mar 2, 2017
Jacqueline Leavy	OEX	Changed Instruction DX-Respond directly to this citizen's questions, statements, or concerns RA-	Mar 2, 2017

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Petition for Emergency Action under the Safe Drinking Water Act, 42 U.S.C. § 300i, to Abate
the Imminent and Substantial Endangerment to East Chicago, Indiana Residents from Lead
Contamination in Drinking Water

**Submitted on Behalf of Petitioners Calumet Lives Matter; We the People for East
Chicago; East Chicago Calumet Coalition Community Advisory Group; Community
Strategy Group; the Hoosier Environmental Council; Duneland Environmental Justice
Alliance; Northwest Indiana Federation of Interfaith Organizations; The Twin City
Minister Alliance of East Chicago; Greater First Baptist Church of East Chicago;
Antioch Network of Church & Ministries; League of United Latin American Citizens—
Indiana Council; NAACP / NAACP Indiana State Conference Environmental and
Climate Justice Program; National Nurses United; Loyola University Chicago School of
Law's Health Justice Project; the Sargent Shriver National Center on Poverty Law;
University of Chicago Law School's Abrams Environmental Law Clinic; Northwestern
University Pritzker School of Law's Environmental Advocacy Clinic; and the
Natural Resources Defense Council**

March 2, 2017

Notice of Petition

Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Robert Kaplan
Acting Region 5 Administrator
Environmental Protection Agency
Mail Code: R-19 J
77 West Jackson Boulevard
Chicago, IL 60604

For decades, the City of East Chicago (the “City” or “East Chicago”) has been plagued by a legacy of lead and arsenic contamination from the operation of industrial facilities in the city and surrounding areas. The City is also home to the USS Lead Superfund site (the “Superfund site”), listed under the federal government program designed to fund cleanup of hazardous contaminants and pollutants pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”).

Against this backdrop of legacy contamination, residents of East Chicago recently discovered that at the Superfund site, over 40 percent of homes tested as part of a U.S. Environmental Protection Agency (“EPA” or “Agency”) pilot study had elevated levels of lead in the drinking water. The EPA concluded that the lead contamination is “system-wide,” caused not by legacy soil contamination, but instead by lead service lines and insufficient corrosion control treatment in the water system.

East Chicago’s drinking water is currently unsafe to drink. Based on the pilot study results, EPA has publicly stated that all residents of East Chicago should assume the presence of lead service lines and use a properly certified filter.¹ The Agency has also indicated that no further testing is necessary because the pilot study results are indicative of a “system-wide” problem.² EPA has provided filters for pilot study participants and has recommended that they continue to use filters for drinking, cooking and brushing teeth until further notice.³

East Chicago and the State of Indiana (“State”) have begun implementing longer term measures to address the water contamination, but these efforts are insufficient to address the immediate need to secure a safe source of drinking water for East Chicago residents. In connection with the release of EPA’s pilot study, enhanced corrosion control treatment measures were put in place in late 2016, and officials have made efforts to secure funding to begin a city-wide lead service line replacement process.⁴ However, additional measures are needed to ensure a safe drinking water supply, at least until the full benefits of the

¹ Ex. 1, EPA, *Frequently Asked Questions about Drinking Water Pilot Study* (Jan. 2017) (accessed Feb. 27, 2017) (“Pilot Study FAQs”), available at https://www.epa.gov/sites/production/files/2017-01/documents/faqs_uss_lead.pdf; Ex. 2, Sarah Reese, *EPA: East Chicago residents should use water filters*, The Times of Northwest Indiana (Feb. 6, 2017) (“Reese February water filters”), available at http://www.nwitimes.com/news/local/lake/epa-east-chicago-residents-should-use-water-filters/article_9e06a949-937f-5610-8c6b-a1316ff9a73d.html; Ex. 3, Sarah Reese, *State to provide free water testing to school districts*, The Times of Northwest Indiana, (Feb. 23, 2017) (“Reese school testing”), available at http://www.nwitimes.com/news/local/lake/state-to-provide-free-water-testing-to-public-schools/article_8be25d7f-b0f6-536f-9f4f-3baffa2540e9.html; Ex. 4, Associated Press, *Indiana to provide free water testing to school districts*, (Feb. 24, 2017), available at <http://www.therepublic.com/2017/02/24/in-indiana-schools-water-testing/>.

² Ex. 5, Letter from Robert Kaplan, Acting U.S. EPA Regional Administrator, to Peter Visclosky, Indiana Congressman (Jan. 3, 2017) (“January 2017 Kaplan letter”), at 3.

³ Ex. 1, Pilot Study FAQs.

⁴ The State has also begun to offer free drinking water testing in Indiana public schools, including in East Chicago. See Ex. 3, Reese school testing.

corrosion control treatment are in effect, including that lead levels are reduced, and/or the lead service lines are replaced.

Petitioners thus call upon EPA to use its emergency powers under the Safe Drinking Water Act (“SDWA” or the “Act”), 42 U.S.C. § 300i, to take action to abate the imminent and substantial endangerment to human health caused by lead contamination in East Chicago’s drinking water. As Petitioners demonstrate below, this contamination meets the SDWA requirements – and EPA’s own internal guidance – for immediate action by EPA, and requires a comprehensive federal response.

I. Background

A. Legacy of industrial contamination leading up to state declaration of disaster emergency

For decades, the residents of East Chicago have been plagued by industrial pollution from lead smelting and refining as well as other manufacturing processes that has left ongoing lead, arsenic and other contamination in the air and soil. EPA has designated East Chicago an environmental justice community. In the city of roughly 29,000 people, approximately 90 percent are people of color and over a third live below the federal poverty line.⁵ An even greater degree of households with young children in East Chicago – who are most susceptible to the worst impacts of lead exposure – fall below the federal poverty line. Moreover, residents of the Superfund site, compared to the City at large, are even more predominantly persons of color, with an even greater percentage living below the poverty line.

East Chicago housed several facilities on or in close proximity to the land that is now covered by the Superfund site, including the Anaconda Copper Company lead refinery; a pesticide lead arsenate manufacturing facility owned and operated by Dupont; the USS Lead refinery; the Eagle-Picher Company white lead plant; and the International Lead Refining Company metal-refining facility. These facilities are no longer in operation, but their legacy – along with that of numerous other facilities that have operated in East Chicago and surrounding areas – still haunts the City.

The community has faced real consequences as a result of the legacy of contamination.⁶ For example, soil testing results released in May 2016 revealed high levels of lead in the West

⁵ Ex. 6, United States Census, *QuickFacts: East Chicago city, Indiana*, available at <http://www.census.gov/quickfacts/table/RHI805210/1819486>. The median household income in East Chicago is \$26,486 per year. *Id.*

⁶ The State recently announced that East Chicago Urban Enterprise Academy, a charter school, is slated for soil sampling. The school is located north of the Superfund site and occupies property located a half mile east of the old US Reduction Co., a former aluminum and lead smelter facility. See Ex. 7, Lauren Cross, *Old smelter north of Superfund site to be investigated*, The Times of Northwest Indiana (Feb. 26, 2017) (“Cross old smelter investigation”), available at

Calumet Housing Complex, which resulted in the closure of the building and residents being forced to move. On the eve of the fall school semester last year, the Carrie Gosch Elementary School was closed down due to safety concerns arising out of the lead levels at the nearby West Calumet Housing Complex.⁷ Residents throughout the City face compounded exposures to lead, including residue of contaminated dust from basement flooding, lead dust at entry ways and lead paint.⁸

On December 1, 2016, before the EPA study findings were released to the public, the City of East Chicago sought a declaration of emergency from then-Governor Mike Pence before he left office to serve as Vice President of the United States.⁹ Pence's office rejected the request.¹⁰ After Pence left state office, and after EPA released the results of the drinking water pilot study, the City renewed the request in a letter to Governor Holcomb, who declared a disaster emergency for the Superfund site.¹¹

B. Water contamination and 42 U.S.C. §300i

In the fall of 2016, EPA conducted a pilot water study to determine whether remediation efforts to excavate the lead in soil at the Superfund site would result in a dislodging of lead from the city's water pipes.¹² Results of the study, released in December 2016, revealed that lead levels in East Chicago's drinking water are well above the action level set by EPA that triggers corrective action by public water systems.¹³ Moreover, results revealed high levels in samples collected *before* disruption of the soil.¹⁴ Despite knowledge of these findings in December 2016, to date no agency has made a broad commitment to ensure the

http://www.nwitimes.com/news/local/lake/oldsmelter-north-of-superfund-site-to-be-investigated/article_8a759b44-6bb6-5618-bc2b-fb40021673e4.html.

⁷ Ex. 8, Joseph Pete and Carrie Gosch, *Elementary students relocated over lead fears*, The Times of Northwest Indiana (Aug. 8, 2016), available at http://www.nwitimes.com/news/local/lake/east-chicago/carrie-gosch-elementary-students-relocated-over-lead-fears/article_9613b63e-0722-51dd-a7f0-6090566c9c89.html.

⁸ Residents of East Chicago also face relatively high levels of lead pollution in the air from concentrated industrial sources in and around their city, as evidenced by the number of lead air quality monitors in East Chicago (two monitors) and nearby Gary and Hammond, as well as Burns Harbor (one monitor each). See Ex. 9, Indiana Department of Environmental Management, Lead (Pb) Data Map, available at <http://www.in.gov/idem/airquality/2651.htm>.

⁹ Ex. 10, Letter from Anthony Copeland, East Chicago Mayor, to Michael Pence, Indiana Governor (Dec. 1, 2016).

¹⁰ Ex. 11, Letter from Mike Ahearn, General Counsel's Office of Indiana Governor Mike Pence, to Anthony Copeland, East Chicago Mayor (Dec. 14, 2016).

¹¹ Ex. 12, Craig Lyons, *Holcomb grants East Chicago disaster request Pence denied*, Chicago Tribune (Feb. 9, 2017), available at <http://www.chicagotribune.com/suburbs/post-tribune/news/ct-ptb-east-chicago-disaster-st-0210-20170209-story.html>.

¹² Ex. 13, EPA, *USS Lead Drinking Water Pilot Study*, (accessed Feb. 27, 2017) ("Pilot Study webpage"), available at <https://www.epa.gov/uss-lead-superfund-site/uss-lead-drinking-water-pilot-study>.

¹³ *Id.*

¹⁴ *Id.*

safety of the drinking water supply to residents of the City as a whole, aside from long-term measures like corrosion control and lead pipe replacement.

Where, as here, state and local authorities have failed to adequately address a public health crisis, the SDWA empowers EPA to act. Section 1431 of the Act vests EPA with broad emergency authority to address endangerments to public health from contaminated drinking water. The EPA Administrator may use these emergency powers “upon receipt of information that a contaminant which is present in or is likely to enter a public water system. . . . may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons.”¹⁵ Once the Administrator receives this information, he may “take such actions as he may deem necessary in order to protect [public] health.”¹⁶ These actions “may include (but shall not be limited to). . . issuing such orders. . . requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment.”¹⁷ EPA has, in the past, used its emergency powers to issue orders to provide alternative safe water sources to community members, require public notice of the drinking water hazard, require contributors to the hazard to treat or otherwise mitigate the hazardous conditions, and require additional monitoring and data collection activities.¹⁸ EPA exercised such emergency authority to provide oversight on water treatment techniques in the case of Flint, Michigan.¹⁹

II. Interests of Petitioners

Petitioners are community groups and local, regional and national advocacy organizations seeking a lead free environment for East Chicago. Petitioners include: Calumet Lives Matter; We the People for East Chicago; East Chicago Calumet Coalition Community Advisory Group (the “CAG”); Community Strategy Group; the Hoosier Environmental Council; Duneland Environmental Justice Alliance; Northwest Indiana Federation of Interfaith Organizations; The Twin City Minister Alliance of East Chicago; Greater First Baptist Church of East Chicago; Antioch Network of Church & Ministries; League of United Latin American Citizens—Indiana Council (“LULAC”); NAACP / NAACP Indiana State Conference Environmental and Climate Justice Program; National Nurses United; Loyola University Chicago School of Law’s Health Justice Project; the Sargent Shriver National Center on Poverty Law (the “Shriver Center”); University of Chicago Law School’s Abrams

¹⁵ 42 U.S.C. § 300i(a).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See H.R. Rep. No. 93-1185, 1974 U.S.C.C.A.N. 6454, 6487 (1974); Ex. 14, *In re Yakima Valley Dairies*, Admin. Order on Consent (U.S. EPA Region 10, Mar. 5, 2013), available at https://www3.epa.gov/region10/pdf/sites/yakimagw/consent_order_yakima_valley_dairies_marc_h2013.pdf.

¹⁹ Ex. 15, *In the Matter of City of Flint, Michigan; Michigan Department of Environmental Quality; and the State of Michigan* (Jan. 21, 2016) (U.S. EPA, emergency order issued pursuant to Section 1431 of the Safe Drinking Water Act, 42 USC § 300i) (“Flint emergency order”), available at https://www.epa.gov/sites/production/files/2016-01/documents/1_21_sdwa_1431_emergency_admin_order_012116.pdf.

Environmental Law Clinic; Northwestern University Pritzker School of Law's Environmental Advocacy Clinic; and the Natural Resources Defense Council ("NRDC") (collectively, "Petitioners").

Petitioners have advocated on behalf of East Chicago residents in a wide-range of issues to address cumulative exposures of lead. For example, on November 1, 2016, We the People for East Chicago, Calumet Lives Matter and three East Chicago residents sought to intervene in the underlying federal Superfund action involving a lawsuit filed by EPA and the State against polluting facilities in connection with response and clean up actions in areas of the Superfund site.²⁰ Petitioners have advocated on local, state and national efforts to secure long term efforts in East Chicago and other cities to replace lead service lines at low or no cost to residents. Still other groups have been advocating on behalf of East Chicago residents facing the consequences of a wide range of lead exposure. For example, the Shriver Center has been advocating on behalf of residents living in the West Calumet Housing Complex in connection with their forced housing displacement due to lead soil contamination. As far back as 1986, NRDC sued EPA over the agency's failure to act on studies showing high lead levels in air emissions at the former USS Lead facility, which is now the Superfund site in East Chicago.²¹ And since the results of EPA's water pilot study were made public in December 2016 showing elevated lead levels in the drinking water, the Community Strategy Group and the CAG have been advocating with local and state officials to obtain water filters and/or bottled water for residents at the Superfund site and greater East Chicago.

A detailed description of each of the Petitioners is located at Appendix A.

III. Lead Is Present and Likely to Persist in East Chicago's Drinking Water, and Presents an Imminent and Substantial Endangerment to Human Health

A. East Chicago's drinking water is contaminated with lead, and lead will likely continue to enter the City's drinking water

The data showing elevated levels of lead in East Chicago's drinking water emerged from a pilot study conducted by EPA in 2016.²² EPA undertook the study, which targeted 43 homes within the Superfund site, to determine if the soil excavation work would cause lead to be dislodged from the old lead service lines. Studies have shown that physical disturbances, including from construction work, can result in increased lead released from water pipes.²³ Of those homes tested, the study revealed that 18 homes, or over 40 percent, had levels of lead above the federal action level of 15 parts per billion (ppb). Three homes

²⁰ Ex. 16, *See United States and Indiana v. Atlantic Richfield Company and E.I. DuPont De Nemours Company*, Motion to Intervene, Civil Action No. 2:14-cv-00312 (N.D. Ind. 2016).

²¹ Ex. 17, *E.P.A Faces a Suit on Lead Emissions*, New York Times (Aug. 20, 1986), *available at* <http://www.nytimes.com/1986/08/21/us/epa-faces-a-suit-on-lead-emissions.html>.

²² Ex. 13, Pilot Study webpage.

²³ *Id.*

had samples measuring at least 81 ppb (five times the federal action level), and with one home's highest sample registering at 130 ppb (nearly nine times the federal action level).²⁴

While testing was conducted to determine the impact from the soil excavation work, the results of the pilot study showed elevated levels of lead *before* excavation ever took place.²⁵ EPA concluded that the primary reasons for the elevated lead levels were unrelated to the soil contamination and, instead, arose from: "(1) presence of lead in plumbing materials and (2) insufficient orthophosphate levels in the drinking water system."²⁶ Despite the intent of the study, EPA has "not yet come to any conclusions regarding the effect of excavation work on lead service lines."²⁷

In releasing the data, EPA stated that it is possible that up to 90 percent of homes in East Chicago have lead service lines and all residents (not just those in the Superfund site) should therefore assume they have lead lines.²⁸ For the pilot study participants, EPA installed filters on kitchen taps and recommended "that participants continue to use the filter for drinking, cooking, and brushing. . . teeth until further notice" as well as that "[a]erators should be cleaned on [a] weekly basis" and "[f]ilter cartridges should be replaced regularly."²⁹ Concluding that the water contamination is a "system-wide" problem, EPA recommended that residents use properly certified filters.³⁰ However, despite its awareness of the presence of lead in select houses, EPA indicated that it would not conduct additional testing throughout the City "because the pilot study identified a system-wide issue that the city is addressing with [the Indiana Department of Environmental Management] IDEM" and that "[a]dditional sampling would confirm a problem that has already been identified and is being appropriately remedied."³¹ To Petitioners' knowledge, no government agency has committed to comprehensive testing to gauge the full extent of the problem or is providing alternative sources of clean drinking water in the near-term for impacted residents throughout the City.

²⁴ Ex. 18, EPA, *USS Lead Drinking Water Pilot Study: Data* (accessed Feb. 28, 2017) ("Pilot Study data"), available at <https://www.epa.gov/sites/production/files/2017-01/documents/uss-lead-dw-pilot-study-data-20170120-127pp.pdf>.

²⁵ Ex. 13, Pilot Study webpage; Ex. 6, Cross old smelter investigation.

²⁶ Ex. 5, January 2017 Kaplan letter.

²⁷ Ex. 13, Pilot Study webpage.

²⁸ Ex. 19, Associated Press, *EPA officials: Up to 90% of homes in East Chicago, IN have lead water lines* (Feb. 6, 2017), available at <http://fox59.com/2017/02/06/epa-officials-up-to-90-of-homes-in-east-chicago-in-have-lead-water-lines/>.

²⁹ Ex. 1, Pilot Study FAQs.

³⁰ *Id.*; see also Ex. 3, Reese February water filters.

³¹ Ex. 5, January 2017 Kaplan letter.



Correspondence Management System

Control Number: AX-17-000-5426

Printing Date: March 02, 2017 03:04:17



Citizen Information

Citizen/Originator: Rigamonti, Eva

Organization: Steptoe & Johnson LLP

Address: 1330 Connecticut Avenue, NW, Washington, DC 20036

Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Control Information

Control Number: AX-17-000-5426

Alternate Number: N/A

Status: Pending

Closed Date: N/A

Due Date: Mar 16, 2017

of Extensions: 0

Letter Date: Mar 2, 2017

Received Date: Mar 2, 2017

Addressee: AD-Administrator

Addressee Org: EPA

Contact Type: EML (E-Mail)

Priority Code: Normal

Signature: AA-OAR-Assistant Administrator
- OAR

Signature Date: N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Broad Industry Letter Opposing Efforts to Change the Point of Obligation under the Renewable Fuel Standard Program and supporting EPA's proposal to deny petitions to change the point of obligation

Instructions: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR

Instruction Note: N/A

General Notes: N/A

CC: Kristien Knapp - AO-IO
OGC - Office of General Counsel -- Immediate Office
OP - Office of Policy
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
StephanieN Brown	OEX	OAR	Mar 2, 2017	Mar 16, 2017	N/A
Instruction: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

March 2, 2017

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt:

The undersigned associations represent a diverse and varied set of interests and industries, many of which have significantly different opinions about the Renewable Fuel Standard (RFS) program. The one issue that brings us all together is our belief that the Environmental Protection Agency (EPA) should deny petitions to change the point of obligation for RFS compliance.

Our support for the EPA's proposal to deny the petitions has been individually shared in formal comments to the agency and in public statements as well. However, we believe that this issue is of such significance that we wish to express our collective support for denying the petitions.

As such, we urge the EPA to reject the petitions to change the point of obligation.

Sincerely,





To: Schnare, David[schnare.david@epa.gov]
From: Shapiro, Mike
Sent: Thur 3/2/2017 2:34:21 PM
Subject: RE: Head's up from today's Administrator daily

David,

Thanks for that feedback. There's already a system of measures linked to our strategic plan to build upon. The Administrator may want to get a briefing on the overall system and/or individual program measures. OCFO manages this process.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Schnare, David
Sent: Thursday, March 02, 2017 9:09 AM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Reeder, John <Reeder.John@epa.gov>
Subject: Head's up from today's Administrator daily

The Administrator has mentioned on multiple occasions that he wants to use metrics to manage the Agency. Today he specifically discussed the pesticides/toxics program, which is on his mind due to pressing issues there. He even indicated that if that office needs more bodies, he would be

prepared to see where from other offices they can be found to get the backlog reduced.

In general, he wants every program (and regions I believe) to have a set of metrics that reflect environmental quality (outcomes rather than outputs are desirable, where possible). He wants to know the current baseline and wants to see a target (including milestone date) for improvement. Examples he has mentioned in the recent past are Superfund site remediation completed and the site removed from the NPL (I'm not sure he yet has been informed why many sites remain on the list despite remediation completion), CAA attainment achieved, impaired waters list emptied.

I encourage you to get prepared to offer these kinds of metrics and work them into your reports and conversations with him.

dschnare

To: Schnare, David[schnare.david@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Reeder, John[Reeder.John@epa.gov]
From: Connors, Sandra
Sent: Thur 3/2/2017 2:32:21 PM
Subject: RE: Item from today's morning briefing with the Administrator

Both OW and R3 are active on this so I can reach out to get a paper submitted. Does COB today work or would you like this sooner?

Sandra

Sandra L. Connors
Senior Advisor

Office of the Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, Room 3317
Washington, DC 20460
(202)564-4231

connors.sandra@epa.gov

From: Schnare, David
Sent: Thursday, March 02, 2017 9:29 AM
To: Richardson, RobinH <Richardson.RobinH@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Reeder, John <Reeder.John@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>
Subject: Item from today's morning briefing with the Administrator

The Administrator wants a one-pager (or longer if necessary) that explains what the WV TMDL litigation is about.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

dschnare

To: Kaplan, Robert[kaplan.robert@epa.gov]
Cc: Pruitt, Scott[Pruitt.Scott@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Schnare, David[schnare.david@epa.gov]; Ireland, Scott[ireland.scott@epa.gov]; Flood, Rebecca (MPCA)[rebecca.flood@state.mn.us]; Blasing, Nicole (MPCA)[nicole.blasing@state.mn.us]
From: Daniel M Marx
Sent: Thur 3/2/2017 11:16:18 PM
Subject: Request to Reconsider and Rescind the U.S. EPA Region 5 Review Letter re NPDES Permit No. MN0051250
[CGMC -MESERB Letter re Delano letter 03022017. Final.pdf](#)
[Attachment 1. EPA Region 5 Letter re Delano.pdf](#)
[Attachment 2. EPA no objection re Glecoe.pdf](#)
[Attachment 3. Letter from MCEA re Glencoe.pdf](#)

Dear Administrator Kaplan:

Attached please find a letter and attachments from the Coalition of Greater Minnesota Cities (CGMC) and the Minnesota Environmental Science and Economic Review Board (MESERB), which represent 93 communities in rural Minnesota.

CGMC/MESERB respectfully request that you reconsider and rescind a letter sent by EPA Region 5 (Region 5) to the Minnesota Pollution Control Agency (MPCA), on January 4, 2017, in which Region 5 issued an unlawful mandate requiring that water quality based effluent limits for municipal permit holders discharging to impaired waters be set at amounts equal to the applicable water quality standard in the absence of a completed total maximum daily load study (TMDL) (*see* attached, U.S. Environmental Protection Agency Review of the Pre-public Notice NPDES Permit for the City of Delano Wastewater Treatment Facility, Delano, Minnesota, Permit No. MNQ051250 (“mandate letter” or the “mandate”)).

This unprecedented mandate lacks support under the Clean Water Act and constitutes an illegal legislative rule that will have severe negative economic impacts for local governments throughout rural Minnesota and lead to the misuse of limited local and state clean water resources.

As detailed in the attached letter, the mandate clearly exceeds EPA’s statutory authority by requiring MPCA to issue permit limits that, according to MPCA’s own water quality data and analysis, are more restrictive than necessary to achieve the applicable water quality standard. Further, the mandate constitutes a significant reversal for Region 5 as it previously approved the very analysis performed by MPCA that it rejected in the mandate letter.

Region 5 justified this mandate by citing to EPA's *1995 Water Quality Guidance for the Great Lakes System: Supplementary Information Document ("SID")* (EPA-820-B-95-001) ("Great Lakes Guidance"). This Guidance is clearly limited in application to the Great Lakes System (which does not cover the watershed at issue in the letter) and does not apply to phosphorus (the parameter at issue in the letter). *See Great Lakes Guidance, pp. 29, 48, 54-55.* CGMC/MESERB are perplexed by Region 5's assertion that this Guidance—which explicitly does not apply to phosphorus—mandates that MPCA set permit limits for *phosphorus* equal to the applicable standard in the absence of a completed TMDL.

Accordingly, CGMC/MESERB respectfully request that Region 5 reconsider and rescind the mandate letter. Please respond to this request within 30 days as the mandate letter could have immediate negative consequences for the local governments that CGMC/MESERB represent.

Thank you for your consideration and we look forward to working with Region 5 to address this issue.

If you or your staff have any questions or concerns regarding the attached letter please contact me at dmmarx@flaherty-hood.com or via telephone at 651-225-8840.

Sincerely,

Daniel Marx, Counsel for CGMC and MESERB

Daniel Marx, Associate Attorney

Flaherty & Hood, P.A.

525 Park Street, Suite 470

St. Paul, MN 55103

Direct Dial: 651-259-1907

Office: 651-225-8840

dmmarx@flaherty-hood.com

CONFIDENTIALITY NOTICE/ATTORNEY-CLIENT PRIVILEGE: This message, including any attachments, contains confidential and privileged information which is intended solely for the individual or entity to which it is addressed and is subject to the attorney-client privilege. If you are not the intended recipient, please destroy all copies of the message(s) and/or attachment(s). If you have received this message in error, please notify the sender immediately. Any unauthorized review, use, disclosure, dissemination, forwarding, printing or copying of this email is strictly prohibited and may be unlawful.

To: Schnare, David[schnare.david@epa.gov]
From: john.willoughby@erametgroup.com
Sent: Thur 3/2/2017 10:12:47 PM
Subject: RE: Eramet Marietta: call follow up
David Schnare Summary final.docx

Mr. Schnare:

I am sure this has been another extremely active week for you and for EPA, but the urgency of our issues prompts me to contact you again. I hope you received my prior email (below), and that you have had an opportunity to review it and the attachment. My purpose is not to nag (at least not too much), but to do what I can to keep our issues from being overshadowed by the others that must arise every day in the new Administration's efforts to push things forward.

I repeat my appreciation for taking my call last week, and for your continued interest in our situation. We look forward to the opportunity to discuss our needs in more detail in a meeting at your earliest convenience.

Thank you in advance.

Work Safely First!

John A. Willoughby

Executive Advisor

Eramet Marietta, Inc.

mobile: 330.933.2182

From: John Willoughby
Sent: Monday, February 27, 2017 12:25 PM
To: 'schnare.david@epa.gov'
Subject: Eramet Marietta: call follow up

Mr. Schnare:

Thank you taking my call last Thursday. You indicated that you had some familiarity with our situation, but requested a summary document since you could not have an in-depth discussion at that time (attached). We are optimistic that this explanation clarifies our need for urgent action.

In addition to our supportive discussions with Ohio officials, we have also had ongoing dialog with our Senators and Congressmen, both from Ohio and West Virginia (in addition to the other company, Felman Production, being located in West Virginia, about 40% of Eramet Marietta's employees reside across the Ohio River in that state). They are all very concerned over the pending loss of jobs, and support our efforts to seek reasonable solutions.

Please contact me with any questions or to schedule a meeting. Due to the critical timeline we face, we hope we can begin immediate discussions.

Thank you again for your willingness to listen.

Regards,

Work Safely First!

John A. Willoughby

Executive Advisor

Eramet Marietta, Inc.

mobile: 330.933.2182

CONFIDENTIALITE

L'information contenue dans ce courrier électronique et ses pièces jointes est confidentielle, et est établie à l'intention exclusive de ses destinataires. Dans le cas où ce message ne vous serait pas destiné, nous vous remercions de bien vouloir en aviser immédiatement l'émetteur et de procéder à sa suppression. Toutes copies, diffusions ou accès non autorisés à ce message sont interdits à toutes personnes, autre que le(s) destinataire(s). Un courrier électronique est susceptible d'altération ou de falsification et peut entraîner des pertes et/ou la destruction de données. Le Groupe ERAMET et/ou ses filiales déclinent toute responsabilité en la matière. En conséquence ce courrier électronique ainsi que ses pièces jointes sont utilisés à votre propre risque.

CONFIDENTIALITY

The information contained in this e-mail and any accompanying documents is confidential or otherwise protected from disclosure. If you are not the intended recipient, please immediately alert the sender by reply e-mail and delete this message and any attachments. Any copy, dissemination or unauthorized access of the contents of this message by anyone other than the intended recipient is strictly prohibited. E-mails may be susceptible to falsification or alteration and cause data corruption and/or loss of data. ERAMET and/or any of its subsidiaries decline any liability resulting from the consequences thereof. Therefore, this e-mail and any attachments are used at your own risk.

To: Schnare, David[schnare.david@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Benton, Donald
Sent: Thur 3/2/2017 10:12:26 PM
Subject: Dr. Appointment

Gentleman, I have an appointment in the AM and will miss 8am meeting. I will be in by 10 and will have my cell if you need me.

Thanks,

Don

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Schnare, David[schnare.david@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Gray, David[gray.david@epa.gov]
From: Coleman, Sam
Sent: Thur 3/2/2017 9:43:52 PM
Subject: Illinois River Watershed Model

Ryan

I wanted to alert you to an upcoming action in case the Administrator wants a briefing or has questions. It involves the Illinois River Watershed which was a subject of Administrator Pruitt's confirmation testimony. I won't go into the historical details since you already know them.

Since 2009, EPA has been funding, on-behalf of our regulatory partners from both Oklahoma and Arkansas, the development an agreed upon scientific model to use in developing TMDLs or other load reduction approaches where needed. There are two models – one for the Illinois River Watershed Basin and another for Lake Tenkiller. Both models underwent independent external peer review. Additional changes have been made based on comments by both the peer review and principal stakeholders in late 2016.

Deliberative Process Privilege/Ex. 5

Samuel Coleman, P.E.

Deputy Regional Administrator

EPA Region 6

coleman.sam@epa.gov

214.665.2100 Ofc

214.665.3110 Direct

214.789.2016 Cell

To: Schnare, David[schnare.david@epa.gov]
From: Richardson, RobinH
Sent: Thur 3/2/2017 2:15:00 PM
Subject: Re: Haze issue

Thank you David! I've called the Air office and gave them a heads up and will forward this on. I'll keep you posted. If there is anything more needed just let me know. Best, Robin

Robin H Richardson
PDAA, EPA/OCIR
(202) 564-3358 (desk)
(703) 581-5814 (cell)
richardson.robinh@epa.gov

On Mar 2, 2017, at 8:59 AM, Schnare, David <schnare.david@epa.gov> wrote:

Deliberative Process Privilege/Ex. 5

dschnare

To: Schnare, David[schnare.david@epa.gov]
From: Smith, Loren (OST)
Sent: Tue 2/21/2017 8:16:20 PM
Subject: FW: URGENT Letter from Alliance of Automobile Manufacturers to EPA Administrator G. Scott Pruitt
[How to UNZIP.html](#)
[removed.txt](#)

From: Wood, Steve (NHTSA)
Sent: Tuesday, February 21, 2017 1:11 PM
To: Smith, Loren (OST)
Subject: FW: URGENT Letter from Alliance of Automobile Manufacturers to EPA Administrator G. Scott Pruitt
Importance: High

From: Tamm, James (NHTSA)
Sent: Tuesday, February 21, 2017 1:08 PM
To: Danielson, Jack (NHTSA); Shelton, Terry (NHTSA); Posten, Ryan (NHTSA); Wood, Steve (NHTSA); Mullins, Timothy (OST)
Cc: Schade, Rebecca (NHTSA)
Subject: FW: URGENT Letter from Alliance of Automobile Manufacturers to EPA Administrator G. Scott Pruitt
Importance: High

From: Susan Conti [<mailto:sconti@autoalliance.org>]
Sent: Tuesday, February 21, 2017 1:02 PM
To: pruitt.scott@epa.gov; pruitt.gscott@epa.gov
Cc: McInerney, Marianne (OST) <marianne.mcinerney@dot.gov>; grundler.christopher@epa.gov; Bill Charmley <charmley.william@epa.gov>; olechiw.michael@epa.gov; Green, Kevin (VOLPE) <Kevin.Green@dot.gov>; Tamm, James (NHTSA) <james.tamm@dot.gov>; Schade, Rebecca (NHTSA) <rebecca.schade@dot.gov>; annette.hebert@arb.ca.gov; michael.mccarthy@arb.ca.gov; Chris Nevers <CNevers@autoalliance.org>; David Schwietert <DSchwietert@autoalliance.org>; Gloria

Bergquist <GBERGQUIST@autoalliance.org>; John Whatley <JWhatley@autoalliance.org>

Subject: URGENT Letter from Alliance of Automobile Manufacturers to EPA Administrator G. Scott Pruitt

Importance: High

Dear Administrator Pruitt:

The attached letter, on behalf of the Alliance of Automobile Manufacturers, requests that the U.S. Environmental Protection Agency (EPA) withdraw the Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation (Final Determination) which was announced on January 13, 2017 but never published in the *Federal Register*.

The Alliance is not asking EPA to make a different Final Determination at this time. All we are asking is that EPA withdraw the Final Determination and resume the Midterm Evaluation, in conjunction with NHTSA, consistent with the timetable embodied in EPA's own regulations. We believe that, if carried out as intended, the Midterm Evaluation can lead to an outcome that makes sense for all affected stakeholders and for society as a whole.

The Alliance welcomes the opportunity for further dialogue. Please contact me at your earliest convenience to discuss this matter further. Thank you.

Mitch Bainwol

President and CEO

To: schnare.david@epamail.epa.gov[schnare.david@epamail.epa.gov]
From: Mary Jones
Sent: Thur 3/2/2017 2:04:19 PM
Subject: Economic Situation Report, March 2017

Research Highlights

Economic Situation Report, March 2017

Bruce Yandle

In just the first few weeks in office, the Trump Administration announced a score of proposed and major policy changes. Add this to an already slow economy and the combined uncertainty is likely to yield postponed investment, delayed hires, and other let's-wait-till-the-clouds-clear reactions that reduce GDP growth. In fact, the Global Economic Policy Uncertainty Index shown below indicates that the index stood at a 20-year high as 2016 ended. (It is even higher now.) Simultaneously, the 2.5 percent US wage growth, while surely appreciated by working families, points to the beginning of an inflationary path.

Given the deluge of policy changes and global reactions that follow, we might choose Elvis's hit song as the theme for the March Economic Situation Report: Whole Lotta Shak'n Goin' On!

The March report looks closely at the nation's weak economic pulse and discusses the possibilities of achieving Mr. Trump's promised 4 percent GDP growth rate in the next decade. The report also assesses inflationary forces playing through the economy, examines the effects of financial regulation on small banks and their local communities, and focuses on the geographic impact of economic activity across the 50 states. A new section—that will be continuing in future reports—puts the spotlight on a single state's performance. Because of significant change playing through its economy, we chose Kentucky for this report. The report also contains a section that focuses strictly on regulation and regulatory policy.

The Mercatus Center will distribute quarterly Dr. Yandle's economic report. If you have any questions about the work Mercatus is doing or for Dr. Yandle, please do not hesitate to contact Mary Jones.

[Read the Full](#)

Related Content

Cumulative Cost of Regulations

Bentley Coffey, Patrick McLaughlin, and Pietro Peretto

The Impact of Federal Regulation on the 50 States

Patrick McLaughlin and Oliver Sherouse

A First Step: Issues with Implementing the Executive Order to Reduce Regulation

Richard Williams

Regulation: A Primer

Susan Dudley and Jerry Brito

Did someone forward you this email?
Don't miss the next Program for Economic Research on
Regulation update. [View all updates](#)

[Unsubscribe](#) | [Manage Preferences](#)
Mercatus Center at George Mason University
3434 Washington Blvd, 4th Floor, Arlington, VA 22201

To: Schnare, David[schnare.david@epa.gov]
From: Grantham, Nancy
Sent: Thur 3/2/2017 1:53:06 PM
Subject: FW: Oil and Gas Info Request New Brief DRAFT v5 CLEAN.docx
Oil and Gas Info Request New Brief DRAFT v5 CLEAN.docx

Per your request

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Grantham, Nancy
Sent: Wednesday, March 01, 2017 6:10 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Oil and Gas Info Request New Brief DRAFT v5 CLEAN.docx

INTERNAL DRAFT –

EPA Withdraws Information Request for the Oil and Gas Industry

03/2/2017

Contact Information:

U.S. EPA Media Relations (press@epa.gov)

WASHINGTON -- The Environmental Protection Agency (EPA) is withdrawing its request that owners and operators in the oil and natural gas industry provide information on equipment and emissions at existing oil and gas operations. The withdrawal is effective immediately, meaning owners and operators – including those who have received an extension to their due dates for providing the information – are no longer required to respond. At this time, the Administrator would like to assess the need for the information that the agency was collecting through these requests.

Under the previous administration, EPA sent letters to more than 15,000 owners and operators in the oil and gas industry, requiring them to provide information. The information request comprised two parts: an “operator survey” that asked for basic information on the numbers and types of equipment at all onshore oil and gas production facilities in the United States, and a “facility survey” asking for more detailed information on sources of methane emissions and emissions control devices or practices in use by a representative sampling of facilities in several segments of the oil and gas industry. EPA is withdrawing both parts of the information request.

More information: <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/oil-and-gas-industry-information-requests>

To: Schnare, David[schnare.david@epa.gov]
Cc: Schmidt, Lorie[Schmidt.Lorie@epa.gov]
From: Minoli, Kevin
Sent: Thur 3/2/2017 1:21:31 PM
Subject: Re: CAFE discussion draft: joint DOT-EPA notice

Deliberative Process/Attorney Client Privilege/Ex. 5

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Mar 2, 2017, at 7:12 AM, Schnare, David <schnare.david@epa.gov> wrote:

Kevin:

Deliberative Process/Attorney Client Privilege/Ex. 5

dschnare

From: Schnare, David
Sent: Thursday, March 2, 2017 5:29 AM
To: Catanzaro, Michael J. EOP/WHO <[REDACTED] EOP/Ex. 6 >
Cc: Smith, Loren (OST) <Loren.Smith@dot.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Smith, Ja'Ron K. EOP/WHO <[REDACTED] EOP/Ex. 6 >
McCown, Brigham (OST) <brigham.mccown@dot.gov>; Fiorentino, Marty (OST) <marty.fiorentino@dot.gov>; Fulton, Finch (OST) <Finch.Fulton@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; Moran, John S. EOP/WHO <[REDACTED] EOP/Ex. 6 >
Subject: Re: CAFE discussion draft: joint DOT-EPA notice

We won't have our general counsels chop until probably Friday. If I can accelerate that, I will.

dschnare

Sent from my iPhone

On Mar 2, 2017, at 12:27 AM, Catanzaro, Michael J. EOP/WHO

EOP/Ex. 6

wrote:

Loren, thanks very much. Appreciate the helpful response. I'm adding John Moran from WHC, who flagged this issue. I suggest David S., EPA counsel, John and I (and whoever else wants to join) get on a quick call tomorrow to nail this down. Loren

Deliberative Process Privilege/Ex. 5

Can the group do a call at 9:30 tomorrow?

Sent from my iPhone

On Mar 1, 2017, at 11:55 PM, Smith, Loren (OST) <Loren.Smith@dot.gov> wrote:

Michael,

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Loren Smith

USDOT

Personal Phone/Ex. 6 cell)

On Mar 1, 2017, at 11:04 PM, Catanzaro, Michael J. EOP/WHO

EOP/Ex. 6 > wrote:

Deliberative Process Privilege/Ex. 5

From: Smith, Loren (OST) [<mailto:Loren.Smith@dot.gov>]

Sent: Wednesday, March 1, 2017 7:35 PM

To: Schnare, David <schnare.david@epa.gov>

Cc: Catanzaro, Michael J. EOP/WHO <**EOP/Ex. 6**>
Jackson, Ryan <jackson.ryan@epa.gov>; Smith, Ja'Ron K. EOP/WHO

EOP/Ex. 6; McCown, Brigham (OST)

<brigham.mccown@dot.gov>; Fiorentino, Marty (OST)

<marty.fiorentino@dot.gov>; Fulton, Finch (OST) <Finch.Fulton@dot.gov>;

Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>
Subject: Re: CAFE discussion draft: joint DOT-EPA notice

We have some tactical questions on our end as well, but wanted to get your take on our basic thrust here first.

Sent from my iPhone

On Mar 1, 2017, at 7:14 PM, Schnare, David <schnare.david@epa.gov> wrote:

Deliberative Process Privilege/Ex. 5

Sent from my iPhone

On Mar 1, 2017, at 7:11 PM, Catanzaro, Michael J. EOP/WHO

EOP/Ex. 6

wrote:

Deliberative Process Privilege/Ex. 5

From: Smith, Loren (OST) [<mailto:Loren.Smith@dot.gov>]

Sent: Tuesday, February 28, 2017 6:02 PM

To: Schnare, David <schnare.david@epa.gov>; jackson.ryan@epa.gov;
Smith, Ja'Ron K. EOP/WHO <**EOP/Ex. 6**>; Catanzaro,
Michael J. EOP/WHO <**EOP/Ex. 6**>; McCown,
Brigham (OST) <brigham.mccown@dot.gov>; Fiorentino, Marty (OST)
<marty.florentino@dot.gov>; Fulton, Finch (OST) <Finch.Fulton@dot.gov>

Subject: CAFE discussion draft: joint DOT-EPA notice

Importance: High

Gentlemen, as discussed yesterday. Attached please find DOT/NHTSA's initial discussion draft for moving forward on CAFÉ/GHG standards for light-duty vehicles.

We look forward to your comments.

+++

Loren Smith

U.S. Department of Transportation

West Building – W85-115

loren.smith@dot.gov

Personal Phone/Ex. 6

To: Schnare, David[schnare.david@epa.gov]
From: Starfield, Lawrence
Sent: Fri 3/3/2017 7:50:11 PM
Subject: Slides on VW settlement
[VW Settlement Overview 02.10.2017 redact 03.03.2017.pdf](#)

Dave,

Here's a version of the VW slide presentation that is suitable for sharing outside of EPA. We removed a slide with some confidential information from the earlier version that had been shared with you.

Let me know if you need anything else.

Larry

EPA's Civil Settlement with Volkswagen

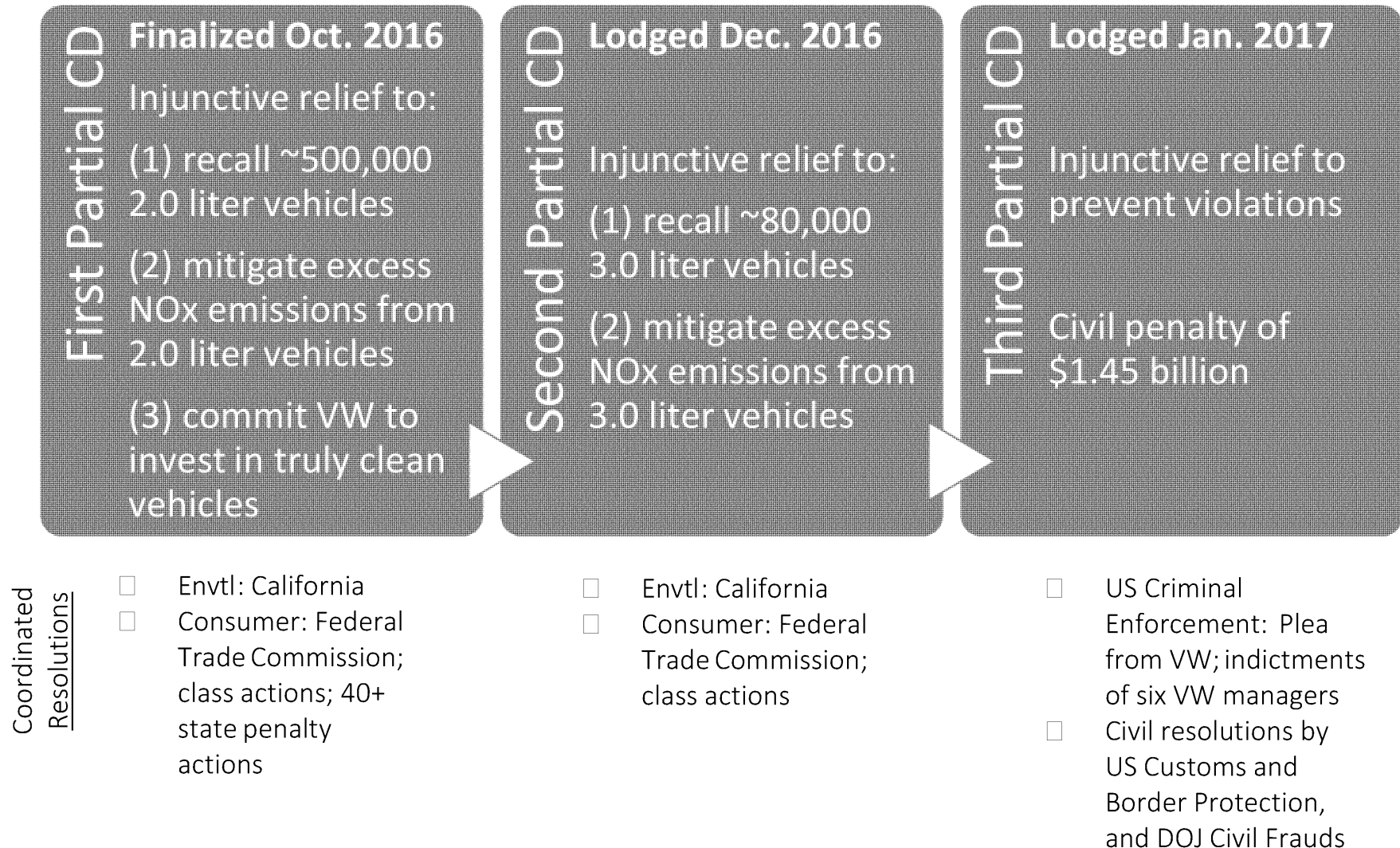
OECA, OCE, Air Enforcement Division
February 10, 2017



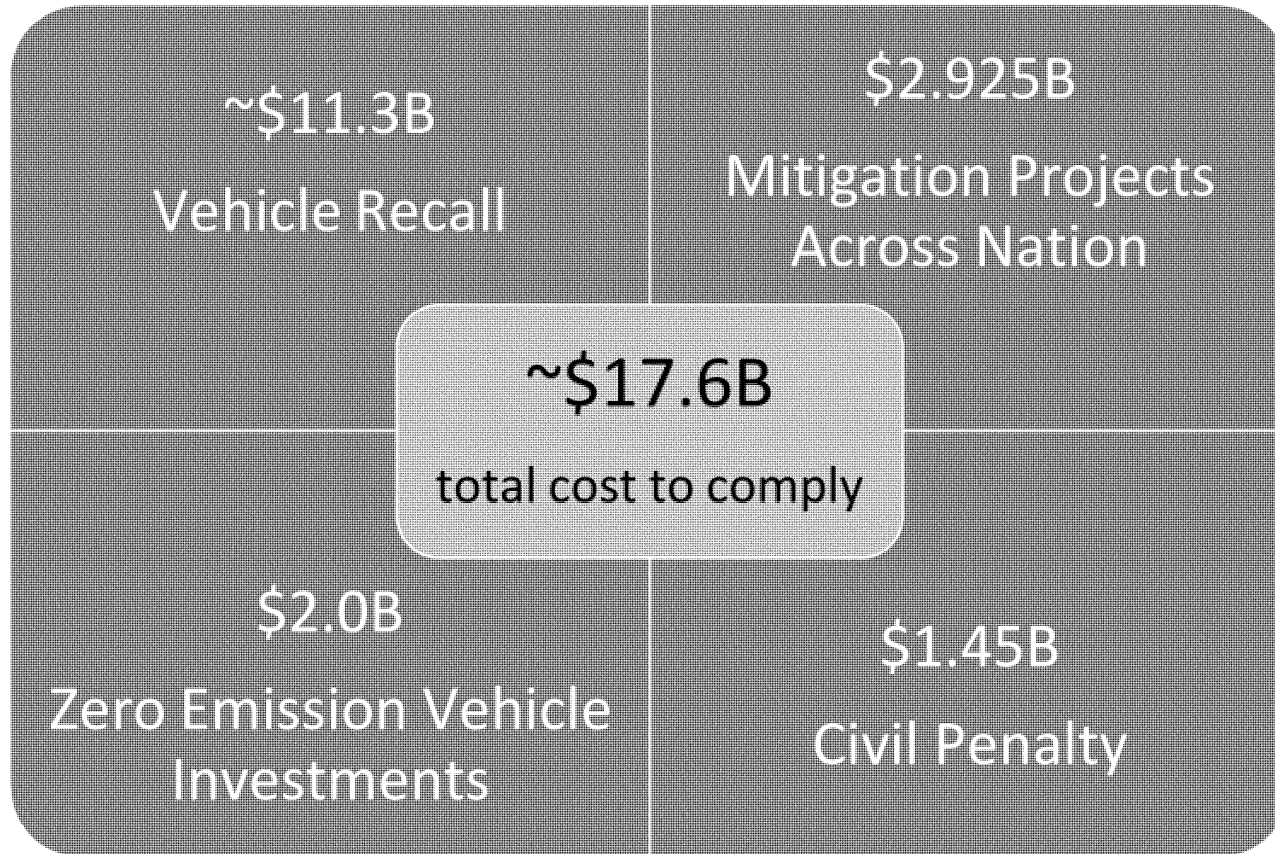
The Underlying Violations

- Every diesel VW, Audi, & Porsche vehicle since 2009 equipped with software to precisely track whether vehicle is undergoing any of five prescribed emissions tests for Clean Air Act certification (time, throttle position, speed, temperature, steering wheel position, etc.)
- When on the test, software regime maintains low engine-out NOx emissions, and catalyst sufficiently treats exhaust
- When on the road, each vehicle employs alternate software regime that increases NOx from the engine and reduces effectiveness of catalyst; tailpipe up to 40 times standard
- When confronted in 2014, VW obstructed, conspired, and covered up the defeat device

Synopsis of EPA's Civil Settlement



Cost to VW to Comply



The Recall: Designed to Protect People's Health



**Mandatory 85%
Recall Participation**

**Buyback, lease termination,
or Emissions Modification**

Additional mitigation if VW falls short

EPA Recall is the foundation for concurrent, complementary consumer settlements by the FTC and class action plaintiff's steering committee. These will secure consumer damages in addition to the fair compensation required by the Clean Air Act settlement.



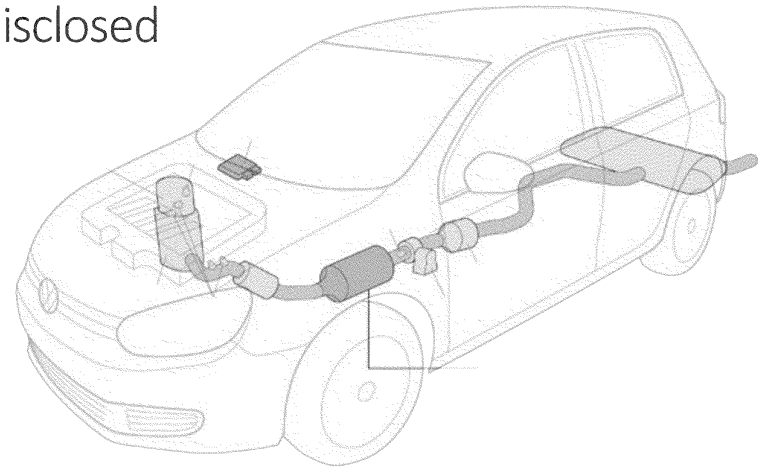
Terms: Recall: Buyback and Lease Termination

- ☐ VW will offer to buyback or terminate the lease for every 2.0 liter vehicle, and about 20,000 of the 3.0 liter vehicles
- ☐ VW will not have to buyback about 60,000 3.0 liter vehicles if VW proves they can be fixed to original certified emissions levels
- ☐ Top quality consumer notices and claims administration coordinated and consolidated with FTC and Class Action
- ☐ VW may resell or export bought-back vehicles only after performing an approved Emission Modification
- ☐ Third-party monitor watches VW's entire recall program
- ☐ In case of buyback, consumer damages of about \$5,000 - \$8,000 available under FTC and Class Action settlements
- ☐ Detailed formulas account for variety of consumer circumstances



Terms: Recall: Emissions Modification

- ☐ No Emissions Modification until EPA/CARB review VW testing and perform own extensive testing
- ☐ Will reduce emissions from the dirtiest vehicles by approximately 90%
- ☐ Modifications involve software changes, and new hardware for some
- ☐ Most vehicles: Emissions will be lowered, and onboard diagnostic system will be enhanced, but still fall short of certified standards
- ☐ About 60,000 3.0 liter vehicles are likely to be fixed such that they actually meet certified standards
- ☐ A good choice for consumers who want to keep their cars, and avoid waste from destroying these cars
- ☐ Enhanced emissions warranty
- ☐ Long-term in-use compliance monitoring
- ☐ Any effects on vehicle performance and durability will be thoroughly disclosed



Terms: Actions to Prevent Future Violations

VW will take various corporate measures—monitored by DOJ—to prevent future problems:

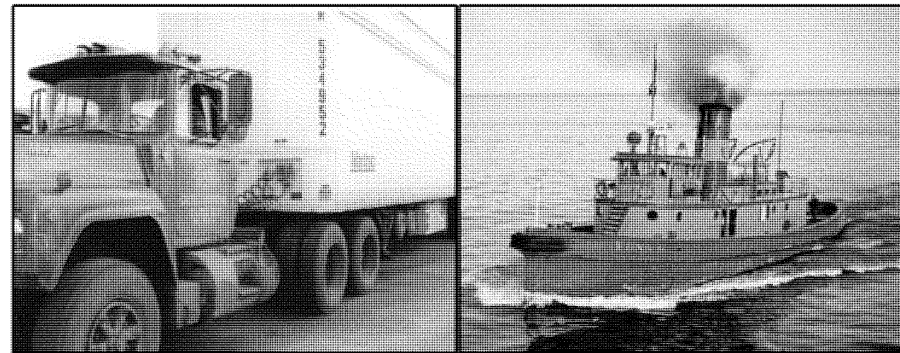
- ☐ ensure the personnel who test their vehicles for emissions compliance are separate from the personnel who design their vehicles
- ☐ establish a steering committee to ensure compliance with the Clean Air Act
- ☐ establish a whistleblower system, and survey employees to gauge compliance
- ☐ retain an independent auditor to assess VW's compliance with this settlement

VW will also perform portable emission measurement system (PEMS) testing on their vehicles, including gasoline vehicles, to ensure vehicles perform the same on the road as in the lab



Terms: Mitigation: Eligible Projects

- ☐ \$2.925 billion will fully mitigate the excess NOx
 - ☐ States select projects
 - ☐ Eligible Projects include projects to:
 - ☐ replace older trucks, buses, and other equipment with newer engines that have lower emissions
 - ☐ enable ocean-going vessels to source power from shore-based systems so they need not run their polluting engines while in port
 - ☐ Create ZEV infrastructure
 - ☐ Money can also be used to match DERA grants
- ☐ For accountability, the list of eligible projects is clearly defined
 - ☐ Projects reduce NOx, but have variety of cost-effectiveness. Overall cost of \$2.925 billion accounts for this and provides flexibility in choosing projects



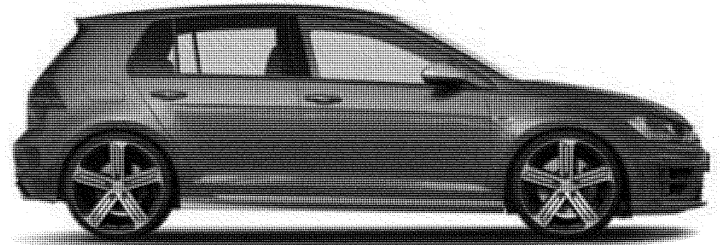
Terms: Mitigation: Allocation & Administration

- ☐ The settlements creates a Trust with the \$2.925B
- ☐ Independent, professional Trustee
- ☐ Trust Beneficiaries may be every state, Puerto Rico, DC, and federally recognized Indian tribes
- ☐ Beneficiaries must waive any rights to take their own action for mitigation
- ☐ Allocation is approximately in proportion to number of vehicles in the Beneficiary's area
 - ☐ No less than \$8.125M
 - ☐ 36 states get \$10M - \$99M
 - ☐ 7 states get over \$100M
 - ☐ Tribes share ~\$54M
- ☐ Beneficiaries must be transparent in how they use the funds. Each must make public its plans for its funding and reports on completed projects.
- ☐ Trustee—not EPA—decides whether:
 - ☐ projects for which a Beneficiary requests funding are allowable under the well-defined list in the settlement
 - ☐ project costs for which a Beneficiary seeks funding are allowable under well-defined cost guidance in the settlement

Terms: Zero Emission Vehicle Investments

- VW will invest \$1.2B outside California and \$800M in California for increased use of ZEVs in the US
- This is injunctive relief to remedy VW's damage to the market for truly clean vehicles and related infrastructure
- Expect VW to focus on the development, construction, and maintenance of charging infrastructure
- Brand Neutral Public Education: build public awareness of ZEVs; VW must spend \$100M - \$200M over ten years

- Detailed cost guidance will be used to track investment obligation; independent accountants will review and attest to creditability of investment costs (minimal review by EPA)
- For each of four consecutive 30-month periods, VW must submit an Investment Plan for how it will satisfy its ZEV Investment obligation
- Investment Plans will be based on input from states and public



The eGolf is already available in United States

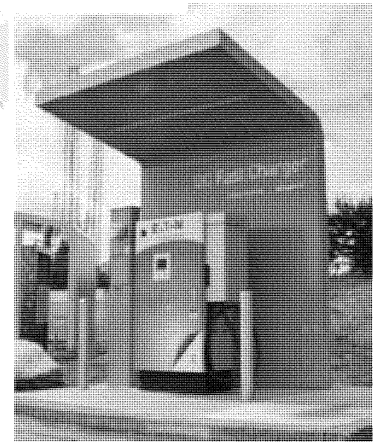
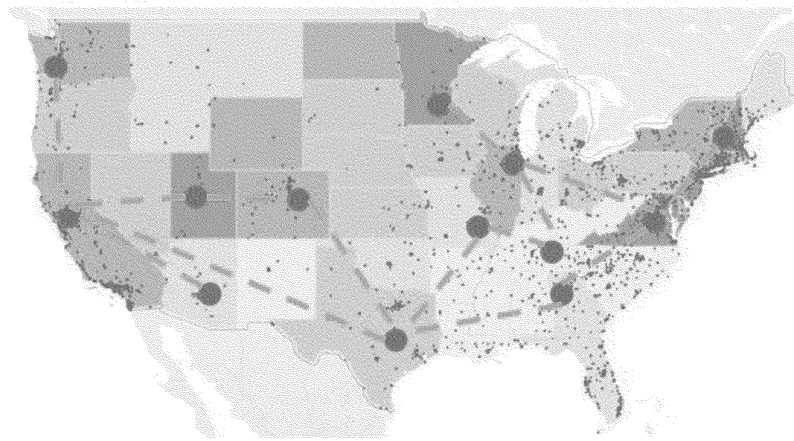
Terms: ZEV Investment Options

ZEV Infrastructure must be accessible to all vehicles using non-proprietary connectors

- ☐ Charging at multi-unit dwellings, workplaces, public lots



- ☐ DC Fast Charging along highways



ZEV Access: increase public exposure to ZEVs; ride-share, car-share, rental fleets; including measure to increase access in underserved areas

Role for States, Tribes, Territories

STATES& TERRITORIES

- ☐ All of the mitigation money goes to qualifying costs for eligible projects as selected by states, territories and tribes (Beneficiaries)
- ☐ Beneficiaries decide on mitigation projects in their jurisdiction from well-defined list
- ☐ There is a minimum allocation per state/territory, so those with fewer vehicles still get enough to do projects
- ☐ States and their local governments can provide suggestions to VW on ZEV investments

TRIBES

- ☐ Allocation amount - \$54M
- ☐ All tribes eligible to seek funding for eligible projects
- ☐ Same project list and administrative steps as for states and territories
- ☐ Consultation soon after lodging regarding allocation decisions

Consumer's Perspective

- ☐ Under the environmental Recall, most consumers get a choice of buyback (or lease termination) or an Emissions Modification
- ☐ Emissions Modification, if approved, would give owners a chance to clean up and keep their car
- ☐ No cost to Emissions Modification, enhanced emissions warranty
- ☐ Compensation for consumer damages available in complementary FTC and Class Action settlements
- ☐ Effective Class Action and FTC notice program
- ☐ Professional claims administration process
- ☐ One website to readily provide owners with summary and details on the Recall, including a way to look up your options by entering a VIN .
www.VWCourtSettlement.com.

EPA Actions Before May 2017

First Partial CD

- ☐ Recall: review and approve/deny proposed Emissions Modification for remaining 2.0 liter vehicles – March
- ☐ Mitigation:
 - ☐ Submit trustee candidates to Court – late February
 - ☐ Continue outreach to facilitate state participation – ongoing
- ☐ ZEV:
 - ☐ Approve creditable cost guidance – mid February
 - ☐ Approve investment plan – April

Second Partial CD

- ☐ Notify VW that its compliance with FTC and Class Action terms for 3.0 liter vehicles would fully satisfy the requirements in the EPA's second partial CD concerning the recall of the same vehicles – February 13
- ☐ Continue technical evaluation of proposed fixes for the 3.0 liter vehicles
- ☐ Review, respond to public comments, then move to enter – March

Third Partial CD

- ☐ Review, respond to public comments, then move to enter – March

To: Jackson, Ryan[jackson.ryan@epa.gov]; Schnare, David[schnare.david@epa.gov]
Cc: Reeder, John[Reeder.John@epa.gov]
From: Flynn, Mike
Sent: Thur 3/2/2017 3:48:44 AM
Subject: Fwd: Heads UP - Breaking News

FYI

Mike Flynn
Acting Deputy Administrator
U.S. Environmental Protection Agency

Begin forwarded message:

From: "Coleman, Sam" <Coleman.Sam@epa.gov>
Date: March 1, 2017 at 5:31:29 PM EST
To: "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Reeder, John" <Reeder.John@epa.gov>, "Hull, George" <Hull.George@epa.gov>, "Connors, Sandra" <Connors.Sandra@epa.gov>, "Kenny, Shannon" <Kenny.Shannon@epa.gov>, "Flynn, Mike" <Flynn.Mike@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>
Cc: "Gray, David" <gray.david@epa.gov>, Weekly Report Group <Weekly_Report_Group@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Breen, Barry" <Breen.Barry@epa.gov>
Subject: Heads UP - Breaking News

FOX 26 News Houston has announced plans to break what they are characterizing as a major Environmental story with potentially huge implications tonight. Confirmed Dioxin laden pits on Galveston Bay. The story will air on Fox26 at 9pm CT. The FOX News reporter has provided EPA a copy of a sampling report from Anchor QEA, LLC consultant to McGinnes Industrial Maintenance Corporation date November 2009. EPA is reviewing the information to determine next steps. A local citizen, Kent Hood has been seeking attention for conditions at the site and also contacted EPA today. The state of Texas is aware of the situation and pending story.

McGinnes Industrial Maintenance Corporation has another high visibility and controversial hazardous waste site in the area called San Jacinto Waste Pits. EPA has proposed a cleanup plan to remove dioxin contaminated sediments and public comment closed in January. Media interest and Congressional interests has been high.

EPA Statement

We are carefully reviewing a copy of a 2009 sampling report from a consultant to the company that was provided to us by the FOX reporter and will take the appropriate action based on our assessment.

Background

The Hall's Bayou Sludge Management facility is located five miles south-southeast of the intersection of FM646 and FM2004 on Hall's Bayou Ranch in Galveston County. The facility was formerly operated by McGinnis Industrial Maintenance Corporation and consists of 32 surface impoundments built for the treatment and/or disposal of industrial waste sludge. MIMC operated the facility between 1966 and September 1994. The TCEQ approved closure of the ponds with ongoing maintenance and monitoring in October 2005.

In 2009 it was discovered that three of the ponds contained dioxins from paper mill waste. The TCEQ approved a plan for additional assessment and repairs in June 2010. The data indicated that groundwater was not impacted above TCEQ cleanup standards. Dioxins were detected in samples from one of the soil borings, however, the samples were from sludge in the pond rather than from berm soils. The remaining 30 soil samples collected from the berm did not exceed TCEQ standards. The TCEQ receives reports annually documenting inspections of the ponds. Repairs are made as necessary.

EPA first conducted a Preliminary Assessment of the McGinnes Industrial Maintenance Corporation (MIMC) site in May 1981. In response to citizen concerns, EPA re-evaluated the site by completing a new Preliminary Assessment in October 1988. The new Preliminary Assessment incorporated up-to-date information on the site's operations and the results of investigations conducted between 1981 and 1988. Based on the results of the new Preliminary Assessment, the EPA concluded the MIMC site did not appear to present the level of risk to human health or the environment necessary for listing on the National Priorities List (NPL) of Federal Superfund sites and was given a designation of *No Further Remedial Action Planned* (NFRAP) under the Federal Superfund Program.

The site was reopened in 1997 in response to new concerns by citizens and a Site Screening

Investigation (SSI) was completed in May 1998. During the SSI, sediment samples were collected from both within and outside the impoundments at the MIMC site to determine if hazardous constituents were present and had the potential to migrate outside the bermed impoundments. Sample results detected low concentrations of several inorganic constituents including barium, copper, and manganese. There were also low concentrations of several congeners of dioxins/furans detected. All sample results were below either the EPA Region 6 Human Health Media Specific Screening Levels, or contaminant concentration levels used by EPA to determine if any action is required at a site. Based on the results of the SSI, the EPA again concluded the MIMC site did not appear to present the level of risk to human health or the environment necessary for listing on the NPL and was given a designation of NFRAP under the Federal Superfund Program. The NFRAP designation does not preclude any action deemed necessary under the State Superfund or any other Federal environmental programs.

Samuel Coleman, P.E.

Deputy Regional Administrator

EPA Region 6

coleman.sam@epa.gov

214.665.2100 Ofc

214.665.3110 Direct

214.789.2016 Cell

To: Schnare, David[schnare.david@epa.gov]
From: Jackson, Ryan
Sent: Thur 3/2/2017 3:07:32 AM
Subject: FW: TX, OK, and AR

We'll just add to our list to go over with him in the morning about actions taken.

Deliberative Process Privilege/Ex. 5

From: Schnare, David
Sent: Wednesday, March 1, 2017 12:30 PM
To: Coleman, Sam <Coleman.Sam@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: Re: TX, OK, and AR

Ryan

Deliberative Process Privilege/Ex. 5

dschnare

Sent from my iPhone

On Feb 28, 2017, at 9:14 AM, Coleman, Sam <Coleman.Sam@epa.gov> wrote:

Ryan,

Deliberative Process Privilege/Ex. 5

Background:

EPA issued a FIP for Arkansas in September 2016. Among other things, the FIP set emission limits based on the best available retrofit technology (BART) at 2 power plants (White Bluff, Flint Creek) and established reasonable progress requirements at another power plant (Independence).

Arkansas, Entergy, and others filed suit in the 8th Circuit. In February, Arkansas and Entergy filed motions with the court asking it to stay the FIP. EPA's response to those motions is due March 8th.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Samuel Coleman, P. E.,

Deputy Regional Administrator

214.665.2100 Ofc

214.665. 3110 Desk

214.665.2016 Cell

Coleman.sam@epa.gov

Sent from my iPhone

On Feb 27, 2017, at 9:39 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Sam, I've been meaning to following up with you concerning the BART FIP, Oklahoma Water quality approval, and regional haze litigation in AR.

I see we took action on the Oklahoma water quality approval plan, but can I get a short briefer on the TX BART FIP comment extension and the history on that with a background piece on the AR regional haze issue?

I'm providing this information to update the Administrator.

Thanks

Ryan.

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

Personal Phone/Ex. 6

To: Schnare, David[schnare.david@epa.gov]; Coleman, Sam[Coleman.Sam@epa.gov]
Cc: Richardson, RobinH[Richardson.RobinH@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Jackson, Ryan
Sent: Thur 3/2/2017 3:05:32 AM
Subject: RE: TX, OK, and AR

Thank you David.

Deliberative Process Privilege/Ex. 5

From: Schnare, David
Sent: Wednesday, March 1, 2017 12:30 PM
To: Coleman, Sam <Coleman.Sam@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: Re: TX, OK, and AR

Ryan

Deliberative Process Privilege/Ex. 5

dschnare

Sent from my iPhone

On Feb 28, 2017, at 9:14 AM, Coleman, Sam <Coleman.Sam@epa.gov> wrote:

Ryan,

As requested, the purpose of this email is to get your concurrence on sending a letter to Arkansas and Entergy

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Background:

EPA issued a FIP for Arkansas in September 2016. Among other things, the FIP set emission limits based on the best available retrofit technology (BART) at 2 power plants (White Bluff, Flint Creek) and established reasonable progress requirements at another power plant (Independence).

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Samuel Coleman, P. E.,

Deputy Regional Administrator

214.665.2100 Ofc

214.665. 3110 Desk

214.665.2016 Cell

Coleman.sam@epa.gov

Sent from my iPhone

On Feb 27, 2017, at 9:39 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Sam, I've been meaning to following up with you concerning the BART FIP, Oklahoma Water quality approval, and regional haze litigation in AR.

I see we took action on the Oklahoma water quality approval plan, but can I get a short briefer on the TX BART FIP comment extension and the history on that with a background piece on the AR regional haze issue?

I'm providing this information to update the Administrator.

Thanks

Ryan.

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

To: Schnare, David[schnare.david@epa.gov]
From: Sugiyama, George
Sent: Fri 3/3/2017 7:27:30 PM
Subject: meeting on March 23 around noon.

I have been asked to inquire about your availability on March 23 to speak to a group call NEDA (National Environmental Development Association) . It is an over 30 year old group of companies which pursue an eclectic variety of environmental issues, mostly air issues. As a heads up the general counsel is my wife Leslie Sue Ritts. But I am doing this on behalf of their President Al Collins, VP Occidental Petroleum. Invited attendees which have accepted include , Proctor and Gamble, Eli Lilly, BP America, Merck & c0mpany, Koch Public Sectors, Boeing, Phillips 66, Georgia Pacific, and on the phone Boeing folks from Washington DC. Based on past meetings it is expected that 5-6 more will attend.

The meeting is on March 23 at Occidental offices at 1701 Pennsylvania. Ave. and the time slot is between 10-1, to give you some latitude. The talk is expected to be 45 min to 1 hour.

Topics would be Clean Air Act transition issues: ozone NAAQS implementation and background/international ozone transport, refrigerants as part of the Obama Climate Action Plan, permitting reform and streamlining (the entire gamut of Bush era rulemakings like help with debottlenecking, fugitives, project netting), the “once in” policy and the regional consistency rule that EPA reversed after the D.C. Circuit told them to enforce it.

A positive response would be most appreciated. Thank you

George

To: Schnare, David[schnare.david@epa.gov]
From: Richardson, RobinH
Sent: Fri 3/3/2017 6:57:50 PM
Subject: RE: 4pm w/OAR on Haze

Great! Thank you!

Robin H Richardson
Principal Deputy Associate Administrator
Office of Congressional and Intergovernmental Relations
U.S. Environmental Protection Agency
202-564-3358 (desk)
703-581-5814 (cell)
richardson.robinh@epa.gov

-----Original Message-----
From: Schnare, David
Sent: Friday, March 03, 2017 1:34 PM
To: Richardson, RobinH <Richardson.RobinH@epa.gov>
Subject: RE: 4pm w/OAR on Haze

Works!
d

-----Original Message-----
From: Richardson, RobinH
Sent: Friday, March 3, 2017 1:28 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: 4pm w/OAR on Haze

Hi David - OAR is setting up time at 4pm to walk through the information in their conference so RTP is able to participate. I'll swing by to walk over. Ok? Invite is on its way. Best, Robin

Robin H Richardson
PDAA, EPA/OCIR
(202) 564-3358 (desk)
(703) 581-5814 (cell)
richardson.robinh@epa.gov

To: Schnare, David[schnare.david@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Dravis, Samantha
Sent: Fri 3/3/2017 6:27:47 PM
Subject: 2pm call

Unless there is a preferable location, we can do this in my office if you're amenable.

SD

To: Benton, Donald[benton.donald@epa.gov]; Schnare, David[schnare.david@epa.gov]
Cc: 'scott.pruitt@oag.ok.gov'['scott.pruitt@oag.ok.gov'];

Hale email/Ex 6

From: John Hall

Sent: Mon 2/6/2017 11:07:56 PM

Subject: Request for Action on EPA "Ad Hoc" NPDES permitting prohibitions

CRR ILOC Letter to S. Pruitt Benton and Schnare - 2-6-17.pdf

Attachments to CRR ILOC Letter to S. Pruitt Benton and Schnare - 2-6-17 - highlighted.pdf

Dear Messrs. Benton and Schnare:

Your attention to the matter discussed in the attached letter would be most appreciated pending Administrator Pruitt's confirmation. We understand General Pruitt will likely receive confirmation in the next 10 days and we wish him the best in that process.

Attached please find a copy of the letter to Administrator-designate Scott Pruitt from the Center for Regulatory Reasonableness on behalf of over 200 communities in 10 states that are members of CRR. The attached letter requests action by the new Administration to clarify, to the DC Circuit Court of Appeals, the status of EPA's decision to continue imposing over \$200 billion in more restrictive NPDES program compliance mandates that had been vacated by the 8th Circuit as illegal rule modifications. As the Obama Administration had done in many other cases over the past 8 years, these new requirements were imposed without any opportunity for public notice and comment under the APA. After EPA's unlawful rule modifications were vacated in *Iowa League of Cities v. EPA* (2013), the agency disregarded the decision and continued to implement the illegal rules outside of the 8th Circuit. In 2014, CRR sued EPA on behalf of the adversely impacted municipalities and the matter is presently pending decision before the DC Circuit Court of Appeals.

Prompt action is requested to address the prior administration's blatant misrepresentations to the Court regarding EPA's ongoing enforcement of the vacated requirements. In an effort to duck judicial review, EPA sought to avoid disclosing agency documents that confirmed its actions, although CRR was eventually able to gain access to the records. (See letter and enclosures). If the Court were now properly informed that the prior administration in fact, rendered and communicated a decision to continue imposing the vacated prohibitions outside of the 8th Circuit (as confirmed by EPA's own documents), there is little doubt that a harsh rebuke of that patently illegal action would be forthcoming (just as occurred in the original *Iowa League* decision). Such a decision would appropriately provide the new Administration with independent proof of the need to address similar arbitrary mandates imposed by Obama Administration operatives at EPA.

Please let us know if you would be available to discuss the issue and be able to send a clarifying letter to the Clerk of the Court - it is not too late to correct these blatant misrepresentations.

Respectfully submitted,

John C. Hall

Executive Director

Center For Regulatory Reasonableness

1620 I Street, NW, Suite 701

Washington, DC 20006

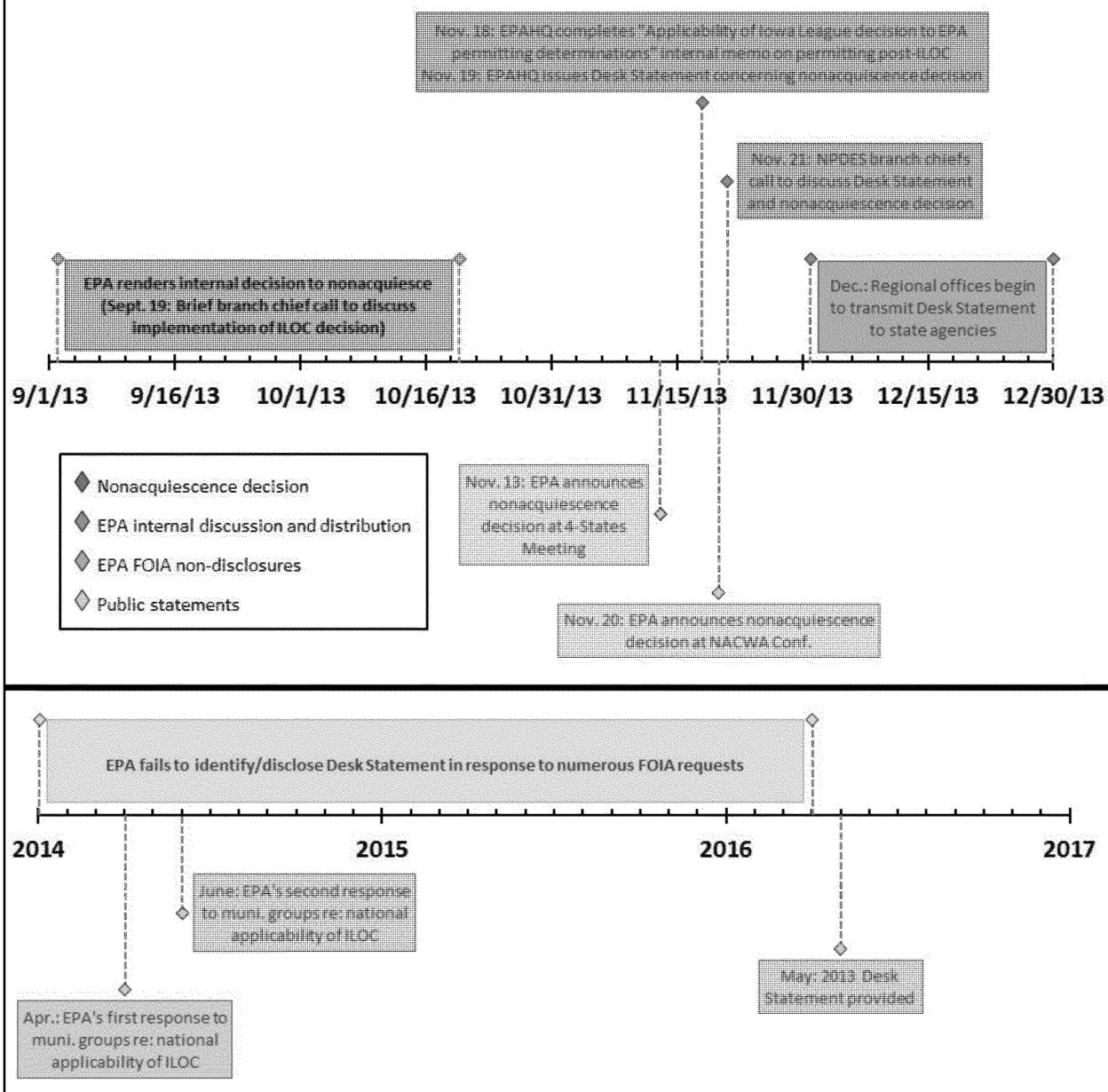
Phone: Personal Phone/Ex. 6

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

Post-ILOC Timeline (Based on New Evidence)



Iowa League of Cities v EPA

Desk Statement

November 19, 2013

Statement:

The Eighth Circuit's interpretation in Iowa League of Cities v EPA of EPA's regulations relating to blending and bypass is legally binding within the Eighth Circuit. Outside of the Eighth Circuit, EPA will continue to work with States and communities with the goal of finding solutions that protect public health and the environment while recognizing economic constraints and feasibility concerns, consistent with the Agency's existing interpretation of the regulations.

B l o o m b e r g
B N A

S I G N I N T O Y O U R S U B S C R I P T I O N S / A C C O U N T

N E W S

N o v e m b e r 1 3 , 2 0 1 3

EP Wea t Pheol r i l c i m e t s e i d g b i t h u r i t s A g e n c y s B l o o m b e r g .
J u r i s d i c t i o n

F r o m t h e P r e s i d e n t

F R E E P R I A L

B y A m e r i c a n A i r l i n e s

N o v 1 3 - M a r a p p e a l u r t l i e n j e t h e m g i r o n P r e o n t t e a c t i o n
A g e n c y e ' s t r i p o c l i o n w e s t e w a i t e h a r g p e r d o u b l e s a n g y
r a i n i f a i m l i t , t h e d u r j u r s s d h a g e i n s a y i d .

T h e e d a g a h c o w , e s t o p p e r d i t e c l a n i n g u a d p t l h y e
r u l n i a n g i o n w i d e .

" O u t e f d e i g b t h e P i n t i c l o n t t o w o e w k i S h a a d
c o m m u n i t i e s o a l f i n d i n g s o l u t i o n s e a t h a t t h e o t e c t
e n v i r o n m e n t o u g h e i c b e n n o g n i n c s t a a d e a s i c b i n k i e t r y s ,
c o n s i w i t t e h a g e n e x i s i t n i t n e g r p o e h a e t g i o n a t t h e P r A s o , l " d
B l o o m B N A g N o v 1 3 s t a t e m e n t .

The following. So our Appellate is going to let the EPA out of
regulation of the water treatment process. It is in the
guidance of the rulemaking (2013 PM, 27 / 13).

If the EPA is to be held liable for the failure to regulate
the air quality, it is not a matter of course. The EPA is not
responsible for the air quality. The EPA is not responsible for
the air quality. The EPA is not responsible for the air quality.
The EPA is not responsible for the air quality. The EPA is not
responsible for the air quality. The EPA is not responsible for
the air quality. The EPA is not responsible for the air quality.

An act of the EPA is to be held liable for the failure to regulate
the air quality. The EPA is not responsible for the air quality.
The EPA is not responsible for the air quality. The EPA is not
responsible for the air quality. The EPA is not responsible for
the air quality. The EPA is not responsible for the air quality.
The EPA is not responsible for the air quality. The EPA is not
responsible for the air quality. The EPA is not responsible for
the air quality. The EPA is not responsible for the air quality.

Me to the EPA

The EPA is to be held liable for the failure to regulate
the air quality. The EPA is not responsible for the air quality.
The EPA is not responsible for the air quality. The EPA is not
responsible for the air quality. The EPA is not responsible for
the air quality. The EPA is not responsible for the air quality.
The EPA is not responsible for the air quality. The EPA is not
responsible for the air quality. The EPA is not responsible for
the air quality. The EPA is not responsible for the air quality.

At the EPA is to be held liable for the failure to regulate
the air quality. The EPA is not responsible for the air quality.
The EPA is not responsible for the air quality. The EPA is not
responsible for the air quality. The EPA is not responsible for
the air quality. The EPA is not responsible for the air quality.
The EPA is not responsible for the air quality. The EPA is not
responsible for the air quality. The EPA is not responsible for
the air quality. The EPA is not responsible for the air quality.

Bergman is to be held liable for the failure to regulate
the air quality. The EPA is not responsible for the air quality.
The EPA is not responsible for the air quality. The EPA is not
responsible for the air quality. The EPA is not responsible for
the air quality. The EPA is not responsible for the air quality.
The EPA is not responsible for the air quality. The EPA is not
responsible for the air quality. The EPA is not responsible for
the air quality. The EPA is not responsible for the air quality.

"The EPA is to be held liable for the failure to regulate
the air quality. The EPA is not responsible for the air quality.
The EPA is not responsible for the air quality. The EPA is not
responsible for the air quality. The EPA is not responsible for
the air quality. The EPA is not responsible for the air quality.

EPA Options

As the court has noted, the EPA's decision to deny E.ON's request for a stay of its order is a discretionary one. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest.

"The EPA's decision to deny E.ON's request for a stay of its order is a discretionary one."

Accordingly, the EPA's decision to deny E.ON's request for a stay of its order is a discretionary one. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest.

"E.ON's decision to deny E.ON's request for a stay of its order is a discretionary one. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest."

The EPA's decision to deny E.ON's request for a stay of its order is a discretionary one. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest.

The court's decision to deny E.ON's request for a stay of its order is a discretionary one. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest.

The EPA's decision to deny E.ON's request for a stay of its order is a discretionary one. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest.

To contact the EPA's decision to deny E.ON's request for a stay of its order is a discretionary one. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest.

To contact the EPA's decision to deny E.ON's request for a stay of its order is a discretionary one. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest. The EPA's decision is based on its assessment of the likelihood of success on the merits, the balance of hardships, and the public interest.

Tracy A. & Pol Moyirow

From: [Denton, Loren](#)
To: [Hannon, Arnita](#); [Cook-Shyovitz, Becky](#); [Samy, Kevin](#); [Pollins, Mark](#); [Giles-AA, Cynthia](#); [Stoner, Nancy](#); [Nagle, Deborah](#); [Bosma, Connie](#); [Shinkman, Susan](#); [Chester, Steven](#); [Weiss, Kevin](#); [Crossland, Andy](#); [Sawvers, Andrew](#)
Subject: RE: Status: Briefing; TPs
Date: Thursday, December 12, 2013 4:59:45 PM
Attachments: [DeputyAdministratorBriefingDec2013USCMNLCNACoDialogueMtg.docx](#)
[Revised Talking Points for DAA 12 11 13 \(3\).docx](#)

Attached are Bob P's talking points and a one-pager on Iowa League of Cities in case he gets a question on it.

Loren Denton
Chief, Municipal Enforcement Branch
Water Enforcement Division
U.S. EPA (2243A)
Washington, D.C. 20460
Phone: (202) 564-1148

CONFIDENTIAL: This transmission may contain deliberative, attorney client, attorney work product, or otherwise privileged material. Do not release under FOIA without appropriate review. If this message was sent to you in error, you are instructed to delete this message from your machine and all storage media whether electronic or hard copy.

From: Weiss, Kevin
Sent: Thursday, December 12, 2013 4:25 PM
To: Denton, Loren
Subject: FW: Status: Briefing; TPs

From: Hannon, Arnita
Sent: Thursday, December 12, 2013 3:26 PM
To: Weiss, Kevin; Crossland, Andy
Cc: Samy, Kevin; Cook-Shyovitz, Becky
Subject: Status: Briefing; TPs

Hi Guys!

Are you close to sending the Briefing and Talking Points over? Please cc Kevin Samy and Becky Cook-Shyovitz when you send this material just in case I've had to leave the office. I am also having trouble sending messages from my blackberry and just got back to my desk so really sorry about having to be a pain J !

Thx as always,

Arnita

PS – Just got word that Nancy Sutley's schedule will prevent her from coming tomorrow fyi!

M. Arnita Hannon

Intergovernmental Liaison
Office of Congressional and Intergovernmental Relations
US EPA
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
202.564.3704 (O)
202.302.9109 (M)
240.602.7118 (C)
202.501.1545 (Fax)
hannon.arnita@epa.gov

If asked about EPA's response to Iowa League of Cities:

- EPA received a letter dated November 26, 2013 from the U.S. Conference of Mayors, the National League of Cities and other organizations requesting clarification of the Agency's position on the *Iowa League of Cities* decision in the 8th Circuit Court of Appeals. EPA is currently reviewing the letter and will provide a response in the near future.

Background of Iowa League of Cities Decision

- In Iowa League of Cities v. EPA (March 25, 2013) the Eighth Circuit Court of Appeals:

(1) vacated portions of two letters that EPA sent to Senator Grassley in response to his questions about blending and mixing zones because the letters constituted legislative rules that were promulgated without notice and comment rulemaking in violation of the APA; and

2) held that EPA exceeded its statutory authority insofar as it imposes secondary treatment regulations on flows within treatment facilities (e.g. apply effluent limitations to the discharge of flows from one internal treatment unit to another), and thus within the Eighth Circuit this decision will have practical effect of limiting how the Agency approaches blended wastestreams.

- The Eighth Circuit's opinion is inconsistent with EPA's long-standing interpretation of the Clean Water Act, the bypass rule and the secondary treatment standard as prohibiting the routing of waste streams around secondary treatment units and subsequently blending the partially treated wastewater back in with treated flows. EPA's position is that blending is a bypass and can only be justified upon a demonstration of "no feasible alternatives."
- EPA has determined that the *Iowa League of Cities*' interpretation of blending and bypass is binding within the Eighth Circuit. Outside the Eighth Circuit, EPA will continue to apply the bypass rule consistent with the Agency's existing interpretation of its regulations.

From: [Weiss, Kevin](#)
To: [Clovis, Debora](#)
Subject: FW: Final Strategy for Responding to Iowa League
Date: Wednesday, February 26, 2014 1:43:00 PM
Attachments: [Strategy for Responding to Iowa League 2 19 14 draft.docx](#)

Debora:

Here is the strategy I mentioned that talks about the experts workshop . . .

Kevin

From: Nagle, Deborah
Sent: Wednesday, February 19, 2014 1:56 PM
To: Weiss, Kevin; Pollins, Mark; Theis, Joseph; Denton, Loren; Vinch, James; Bosma, Connie; Witt, Richard
Subject: Re: Final Strategy for Responding to Iowa League

Good. Now let's put this w pager down and move on to the important effort of organizing a panel discussion on health impacts.

From: Weiss, Kevin
Sent: Wednesday, February 19, 2014 1:09:41 PM
To: Pollins, Mark; Theis, Joseph; Denton, Loren; Vinch, James; Nagle, Deborah; Bosma, Connie; Witt, Richard
Subject: Final Strategy for Responding to Iowa League

Here is the final version of the strategy –

[REDACTED]

Strategy for Responding to Iowa League

Direction to take inside 8th Circuit: Permits for POTWs that blend must:

- Have a bypass provision that is at least as stringent as EPA's regulations at 40 CFR 122.41(m),
- Clearly identify the treatment train that will be used during dry and wet weather,
- Will not have internal permit limitations (unless end-of-pipe effluent limits are impracticable),
- Require monitoring to yield data that is representative of the monitored activity (see 122.48(b)) (permits should clearly specify end-of-pipe compliance monitoring during wet weather),
- Provide percent removal requirements according to the secondary treatment regulations, and
- Meet water quality standards.

Direction to take outside 8th Circuit: EPA would continue to apply its historic interpretation, that bypasses are prohibited by the CWA unless a NPDES permittee can meet all of the following criteria:

- The bypass was "unavoidable to prevent loss of life, personal injury or severe property damage";
- There were no "feasible alternatives" to the bypass, and
- The permittee must have submitted notice of the bypass to the director of the permitting authority.

On a case-by-case basis, a permittee will be considered to be implementing all feasible alternatives if it is implementing an adequate CMOM program, including an acceptable I/I program, is in compliance with pretreatment requirements, and for any bypass around secondary treatment:

- There is side stream treatment that meets an acceptable level of treatment (e.g., significant solids removal);
- The recombined flow meets effluent limits, utilizing representative monitoring during dry and wet weather; and,
- Flows to the secondary treatment units are maximized.

Note: There was general agreement at the 2010 workshop on this approach to blending.

EPA would hold a workshop with public health and engineering experts to ask questions about the public health implications of blending:

- OECA and OW would agree on questions to ask the panel of experts and would send these questions to them ahead of time. The questions would cover effluent from full secondary treatment as well as blended effluent and other discharges during peak flow events (including bypasses that are not blended) with and without side stream treatment.
- The workshop would be facilitated by a professional facilitator.
- Purpose is not to seek consensus but to solicit individual views – so it is not a FACA.

Depending on the outcome of the public health workshop, we could:

- Implement the approach that was generally supported at the 2010 workshop (see discussion above);
- We could hold another workshop of representatives from states, municipalities, NGOs, WEF, etc to review the findings from the public health experts workshop and to review the outcome of the 2010 workshop and provide individual views on the steps that should be taken in wet weather events to protect the public from inadequately treated wastewater;
- We could maintain our historic interpretation without any change; or
- Adopt one of the previous draft blending/peak flow policies.

The next step depends on the recommendations. It could be a policy or a memo to the regions.

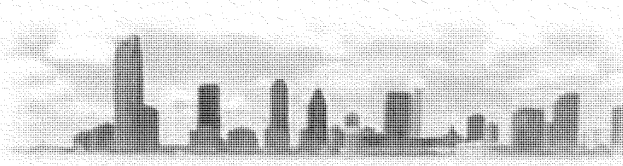
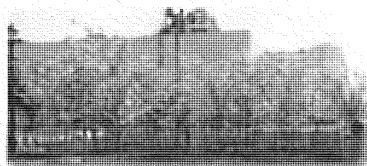
Communicating our Strategy: We could respond to the US Conference of Mayor, et al letter by summarizing this strategy or we could send a memo to the regions.

Governor Chris Christie Governor Kristin Quackenbush

NJ Home Services Department and NJ Office of the Attorney General

Search 

STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION DIVISION OF WATER QUALITY


[Home](#) [Contact](#) [Topics](#) [DWQ Home](#) [DWQ Contact](#) [NJDEP Home](#) [NJDEP Online](#) [DEP Bulletin](#)


For Permittees

[Individual Permits](#)
[Submit Schedule](#)
[NJ Minimum Controls](#)
[Community Collaboration](#)
[Long Term Contributions](#)
[Integrated Planning](#)
[Guidance and Resources](#)
[Financing](#)
[Weather Demonstration](#)
[Join our Email List](#)

Individual Permits

In March 2015, the Department issued its final individual combined sewer overflow (CSO) permits. The permittees are responsible for the repair and replacement of sewer infrastructure systems to protect public health and the environment. The permittees are required to develop and implement a long-term plan to eliminate CSOs. The Department is working with the permittees to develop a long-term plan to eliminate CSOs. The Department is working with the permittees to develop a long-term plan to eliminate CSOs.

The Response Committee is reviewing the permittees' plans.

The Department is working with the permittees to develop a long-term plan to eliminate CSOs. The Department is working with the permittees to develop a long-term plan to eliminate CSOs. The Department is working with the permittees to develop a long-term plan to eliminate CSOs.

Permittee	DEP Team Lead
Camden County Municipal Utility Authority	
The City of Camden	Adriana Caldarelli
The City of Gloucester	Adriana.Caldarelli@dep.nj.gov
Trenton Sewer Authority	609-984-3660
Middlesex County Utilities Authority	
The City of Perth Amboy	
Bergen County Utilities Authority	
Fort Lee Boro	Nancy Kempel
Hackensack City	Nancy.Kempel@dep.nj.gov
Ridgefield Park Village	609-292-4860
The Joint Meeting of Essex and Union Counties	
The City of Elizabeth	
North Bergen Woodcliff STP	
Town of Guttenberg	Joe Mannick
Adams Street WTP	Joe.Mannick@dep.nj.gov
River Road WTP	609-292-4860
Passaic Valley Sewerage Commission	

Bayonne City MUA
 Jersey City MUA
 City of Newark
 North Bergen Township MUA
 East Newark Borough
 Harrison Town
 Kearny Town
 Paterson City

Dwayne Kobesky
 Dwayne.Kobesky@dep.nj.gov
 609-292-4860

Contact DEP Privacy Notice | Legal Notices | Accessibility Statement

Department of Environmental Protection | Index | Top | Programs | Statewide |
 Statewide | Home | Services | Departments | Agencies

Copyright © State of New Jersey 1996 - 2015
 Department of Environmental Protection
 P.O. Box 402
 Trenton, NJ 08625

March 2015

RESPONSE COMMENTS

Both the HSA and the SEP in the HSA RHP are subject to the extension of the bonding period to 14 days.

9 6.COMMENT Sec 61.4 n.æu tvhi dMIEUCo v a l U S a t y p a p e h N e a t i o n a l
 C S O o l a o y n e f h l a C a l t e r n t a t e i a v s e l e d w e v e d i c a t e s t h a t s u
 o p t i i o u n r r e n d h j o b s i t t e d e l o i t s o a t p p a w l e y n t o i p s t i i o h l o t w b e e d
 a s s e s t h e d e p a r s m e d e d e w h i e r t h e i a r d d e p s t t e a d u e i n t e n d e d
 t o e s o p t i o t h e a w i t h e o r m i z e d d a y t h e b e d n a a l o s i o d o l i t y
 p r o p e b t e i a c [9] .

9 7.COMMENT R e g a r t d h e i n g R e o r a f d a c i s l e i v e l y i a b o p t g e r e s e n t i t y
 a l l f o o v n c r e s s e l o w o c e a s a d i v o g i d a p n u c e l x i o s o m e r e a t e d
 w a s t e w t a o t e e r n M U C r o m p l a i n t C o m p l e m e n t t h e i n e f i a s e i t h o e n ,
 a b i t l e i n p l a c e o y p a s s i m p l y a p p e i t a b l l e m f i o t f r i d i o m e b n e d
 d i s c h a h l e u e d R o i n v s h r o b e d a r [2 5] d .

9 8.COMMENT T h e i o f E l i z a b e t t h f e l n a d M i E n U i O v l e a t a k e l s a c t e
 J M E U C a s h i a g n i i f m i p c a p n t t h C e i t h e r o m f s h c e o n v e y a p a b i d h e i e s
 T r e n A v e n p u e m s p t a a v a n r r e e g u l b o m d o w h e c a d i s c h a h g e e f o r e ,
 w h a v e e s i t r e l e i b e l s e t h e i o a j u s i d d a i m p e d t h e o C E i l t i y z a [b 8 e] t h .

9 9.COMMENT T h e d e p a r s m e o d d s a i d d e a r d g i t i o f n a d n e a t t i o n a l
 P o l i t e y f p r o t h e P a l f y . G A s t a i t e h l e a t i o n a l C S O a p p o r l o i w a y l ,
 o a C S O r e l y a t t e n d o n g C S e o r m p l a t a m i n i m u m u l d p r o v i d e
 j u s t i f o a c a t t p o r f a t h i c h f l w i d e l i v e f r t o e n s e c o n t r a e r a y t m e n t
 p o r b i f o t e r e a p m e a n t p r o v a d e e f a t a d o y e m o s n s t h a d r i v e y a n c e
 o w e w t e a t f h l e d n h P e O T V o p r r i m a r r e y a i n s e r b e n e f t h o i n a C S O
 a b a t e m l e t r e t s a d i s v e s a n g l e m p a d l o s r e c o n t r a e r a y t m e a e p a s a w e o n ,
 o s a t e t l r l e i a t t e m l e 8 n 6 t 9 / 3 V o I N , o 7 . 5) l . n h D e r a p f e t r i n a s h e t h e ,
 D e p a r s m e t h e a s t " e N a t P o r t a i t y o u p r a g m e i t o t o e n e s i h o s e a b y p a s s
 o s e c o n t r a e r a y t m h e e v a l u a t l i t o e n r n a l t r o v a e c " u t r o a t s a y l o w s "
 r a t t h e a r e n c o u [5 [g] e i s] . "

1 0 0 . COMMENT T a s h e a l t s o t t e n h J r e g u l p a r t o i h o y p i a t s s t a t t h e a s t e
 D e p a r t m e n t t t h a t r e v o e n i e d e b e n o d i f o e d e a r l b o y p a s s e s
 p a r a p p r b T v C e R d U r d 4 C F R 2 2 (. 4 4) b y p a s s o h i b u i t t h r e u l , e
 p r o v f i e r s o r d e i n s e c n t e i t o p e e r m s h o b w t a h e y p a s s n a v o i d a b l e
 t p r e v e o s i f e r , s i o m j a u l e y v e r e p d e a r m t a y g a p e e ; r m s h o b w t a t h e r e
 w a s o f e a s a i l b t l e e r t n o a h b e y p e a n t h p e e r m s t u b e t t h r e e q u n i o r t e i d c e .

T h e a s h e s e t t a u t n e d s e h E v a l u a t l i t o e n r h a d i r v d e s t m D e p a r t m e n t
 c o n s a i d y e p a a s s e a s a i l b t l e e r . n . a . h i s e a c c t u h r e a t s e h e s e t o s i d ' t i e n ,
 o r d e r r y p a s t o i o g n s i i d t h e s e t l e m o n s t t h r a t t e e n d e d e a s i b l e
 a l t e r t h a y p a s s . "

T h e n f o e a s a i l b t l e e r a a a l s y h e o b s d o c l i u n d e d C P T . h N e a t i o n a l
 P o l d e s y c w h t a i n s a l s y h o i e s n d i a m i o l r d e e t [5 [1 1 1 .]

RESPONSE 10 Date typed: December 14, 2009 DocId: 3678144a, Anderson, ChioeF PAR eg 26 m eVantRegu lBartomcom, fithr hte n o f n g m a r y a n s d e c o n t r a r y t o w s e e x i s t i f n l u i m n i t t m a t h p i e n I s o t w h e r d a C S D p e r m i t t e r o p o s a t i l s f a e d e s b e P l a t . c t . h e S C o n P r o l l 5 9 y , F e R e g 1 8 6 9 3 a n d h o s t e C . F § R 2 . 2 . 4 A (s m t) a . t e d :

" N J D n E a p y r o v a d e p e h a i n t s t r e e i s s u e t h v a t e a r d l t h p e e r m o t b e o p e e a d l a n g a p p e c a C S o g l a y p a i s p e t h n e i s t u b e i l t s i n f o r m a t i o n o a s t h a t h r e e q u i r i e m C F R s 2 2 . (n 4) (h i a) b e m e t . I f h p e e r i n s i d o p e n n e d i a f n o d e d a p d e a p p r o v t e h e p y p o u s d n e e d o e c t o n d i f t o w h o e a n h o w a p p r b y p w e a d c u r . "

If hee r m i n t f e e a s a i l b t l e e r a a d i s y h o a s t a l t e n w d i n g a p p r o p r i a t e
d u r t i m g o t f e h p i n e s r m a i n a l f e e a m i m a n a y d m e e r s f e e d e s p a r t m e n t
w i d d n s a i m d a e j p e r r m o d i f i t o a l t l a o b e n v i a n d e n N . 7 J : 1 A . A C . 2 3 . 2 (b)
f r d t h p e r o h i a g i a t i n p a s a n y o g b i f o t r e a w e a n s . J . A . C .
7 4 A - 2 3 (m) C r S S T P T h e d e p a r t m e n t a n a r t s o t u d i o s t h e w u t e
i n f o r m a t i o n t h e r i b e N i a l . A . C . 7 : t h e A r c o l o s . t 4 (a u f f e r n g
m a j m o o d i f i o c r a e t v i o o c a n t d i e n o w a p e r m i t .

Under J.V.G. 41a CSQ is a part of the TCP Permiatree estior ed
evalattee nate at the waipment of or eldsu CSQ e b n a x i m i z i n g
t h u e s o f r i m t a r r e y a t r a p a t i h S e T P m e d N a t i 6 5 0 b l i g c o y a ' f s
m a k i t h g e a u t s e e s i s i e n x g i s p l i a m g f r a s t S r p u e c t i u f r i e c r a n l i s t h y a e l s
a l e s v a l t u h e e a s i o b u i s l i n g l a e x c p s i m t a r r e y a t r a p a w i i t t h y
d i s i n a e d e t c h n o t o m a t t h e s e u n p r i m a r y f t o f r e a t h a e t n t
w o u l d o h e e d w s i h e a C o p l e h i s t e d e t t i n g S e P e ' s f l u e n t
l i m i t a t i o n s .

A l t h o u g h t h e e f f e r a p p e a r s t o b e a n a t t e m p t t o i n f l u e n c e t h e j u r y i n t h e
 w o u n d e d t h e n o d i f a e d b o y w a s s e e n a p p r o a c h i n g t h e p a m p h l e t s .
 r e e v a t h u s t u c h e d a v e u t n h a n t x e m p i t a i l o n w a n d N e e j . A . C .
 71:4 A - 23 S D (a b l) t e r w e a t e a t t e r e a p m e n t o n a g h b y c o n s i d e r r e d
 S T P t h a e t c e o m e i s r e v e l o t w o s e d t h e t P e ' s f l u i e n n i t t a r n d a o g n n s l y
 b e r a r a t a n d d i f i t o a h p e l a G S N S P D F S r m l i s t u c h a s t e h S e t P
 p e r m i t a t g e p s l o y h D e e p a r f r a e r t r i m o d i f i t o a n t c i l u m e e i f i c
 c o n d i w t h i d o n h e n d a i n e l l o u n d e d e . j . A1: 4A6- b4n-d23.2 (b) .

N. J. A1:4A - 1a3p.112 in es q ute osotds w ewt e a tehfe rllui enni tt aanti s o r t s
a d d r e s t s e e d N J P D F 6 r n a i n d e q u c i o r n e s s i d o e f r a d i i t o m o r t a e l r i a
d e s c r i b r e u d l e .

Noch a n g a e b s e e n m a n f e i p a e l r m a i a r (e s s u f l i t e c s e n m e n t s .

100 COMMENT: I a r i f i s c e a t o d i c h p e o t e n a t u i t a h l o d r y i s z c e d a c g a t o n s
J M E U S e v a d r i a c h a p t g e r e s e n t a y l f e o r m s t e s s f e l d w
p r o c e a s n d i n g d a f n u c e l x i c o s u m e r w a s e d w a o t n e o r m e f t h e s e

po i instust h obryti h Der af petr mTi de n s NM C omp l a a l t C P
i m p l e m e i n t h a e i m e f i a s e i t h a e b i t l e m y h a G S O y p a e e E e l i z a b e t h
R i v s h r o b e d l o [w e] d .

RESPONSE W h i i l i e s r e m a t t e u r a e l a C S O e o n a r l d e r i n n a d t e i p v e r f d e n t
t h c e o m p l l t e C t P e a p p e t a n s p e e r m i s e e e e t s h a i D e e p a r t m e a t d e r
C S O y p a e e E e l i z a b e t h o w e v i e t s n c l a e a w h e t o h n e o t t h s i u g g e s t e d
b y p r e s d e d o u t e p d e r m o t u t e d e d a l t e r d n i a s t c i h v e r g e d i o n n o t
c u r r a e n t h g i r t i n e R D E S O e r m i t .

W i t r l e s p e d i e s s u b e l e n p l e n g s e b a l t e n d i s i m g e t n e d i l a i t h e d
e x i s t i n g t f a r b o n p l i a a e k i v i t t P D E S p e r m i i t s e p q u a r i a m e e d t e r s
A n g l t e d i n s a d l e a c g u o i u d r e l q u a u t e o r t i h z r a d i s i o p n a r J P D E S
p e r m i t i o n o l t i d e e n v g e l o o p i n h a e p p r o p i r m a e t e s a W Q M P
a m e n d m e n t u b j e c t o d t r a n s l e g u l a t i o n s .

N o c h a n h g a e v e e n a d t e d h F e i r p a e l r m a a r (e s s p u l h t c i o s m m e n t .

1 0 2 O M M E N T h e r e a n b a e e n m a e d e y E P A n d i t t o d t h c e o u i m t o w a
L e a g e t v i E e P A , 1 F . 8 4 (4 8 C i 2 1 . 0 s 3 t) a h a t f e e d e y p a s s e ' s
p u r p o s e e n s t h a e t e p r r s o p e r l a y n n o a p i e n t t a t i e n e a f m e n t i t i e s
[p u r s a p p l i c a d e l e t l e y c i m g o l o s g y a n b l a s r e d e s q , u " i m c o n l o y s
t m o v t e h r o t u h e a c a s i w a d e s i g n o e p e r a t h e l l ' f l m o e r g e e n e r a l
s e c o n t r a e r a y t r e g o l a b e y o p n a s s , d e e a s r t e q u h u e s e a n p a r t i c u l a r
t r e a m e e h o t d e c h n o W o t t h p e e ' r e n f i l l u i e n n i t t e a s t t i a o b n t s h e h i n g
t h r e s b t h l e e d o f l r e a t r e q u a d e e d g h b e l e n e d f e d l m u e e n t t h e e r m i t
l i m i t t o s u n d i f a u e n t d t e n e J A . 7 C 4 . A l - 2 3 . p 1 r 3 o (h m i) b o i t r h i e p m a s s
p r o v i s i o n . [2 5]

1 0 3 O M M E N T H o w d o e s e e m e r g e i n s c o y h a r g e f p n e b R D E S i o m e n t h e
d e c i s i o n i n a e a g u e t v i E e P A , 1 F . 8 4 (4 8 C h 2 0 1 a 3 p) p a l t y h P S o e t W s
f o p r e d k m a n a g e o n e t s t h f e e d e r d o l y p o s c e d [4 r 2 e 5 s] ?

1 0 4 O M M E N T I : f N H S A r t o o m b t i h e e x i s o t 0 2 m 0 d i s c h t a e r n g s e f u s u r e l
d i s i n a e d f e i o n s d e a c r h y l , o r a i n t h a e i n e o t a c e o g n e b i f n e o u s t h e
e x i s o u i t i n g a S A v o u b e i n u c l o m p l w a t h e e x i N U P D E S m i t a t i o n s .
U n d e r l a e a g u e t v i E e P A n b l a s u e p d r e p a r p m e n e t h e i n s e p t
c o n s t a i b y p r e s e i r t s h e a r f e d e a w [1 2 5]

1 0 6 O M M E N T F u r t i m e s r i g a e d a d o w h e e m e r g e i n s c o y p a o g e o s f i h o e n s
N J P D E S N e s t , i 6 8 0 b l a n k y o l a e a g u a s e a f f e l o y p n g e v e s l e o r a d
a p p l i t o S a t P i l s e t o v r i a d i d d e n a t l i l f o y p a e k e a n a g e a m p e n r t o a l t h e s .
w o u l d e t n h a t e i g e r e a t u s t i f o r a p e e f i k o w s g i v l e n a g u h e l o w a
d e c i s i o n i f w i o u a l i z o m s i d r e s a b i l a d e s e l s t o b j e c t i v e s .
[4 8]

RESPONSE - EPA by pass rule. F § R2.2. 4wla (sup) h e d
 ear fl e d e p p e d e a t i s N R D C E P A 8, 2 E . 2 0 4 D . C i . 1 9 8 E P A
 main t a n t a n d e c i s i o n i n a g u l e i v e P A s, 1 F . 3 4 (48 C h 2 0 1 i 3 a) t
 o d w s i t h D e . C i r c l u d i n g s t r a n d i n g A b s p a s s u a l r e g P A s
 d e t e r m i n e d w a a g u l e i d i e e c s i s s i n o a n p l i i t a h e i C i r c u d t .
 d a f e t, t h r e e m a i n t h e a t d i o n t h e t h i r c i u n i t e n t d i o v r e a f l a y g u n d
 t r e a p m e n t w s i s e s n s i a p e r o d d i b b y i p a e s s e s o n t h i a f i d n F § R .
 1 2 2 (. 4 a) I r s e a t i s t f h i p e e d l w a s e i t e a a d t h e d e c d t o 9 b 2 e 0 r 1 f 4 r, o m
 K a A e d e r C h o i e , I f e v a n t R e g u l a t o r E p h R, e g 2 o r e s p o n s i m g i l a r
 r e q u e r e d S C M s A n d e r b e t i s e o r i t h a e d m i n i s e c a t d v e

More o s e e c t 5, i l o f h C e A p r o v t i h s e t t a t u d e i s u p e r j e s s e i n g e n t
 f e d e e g u l a 3 t 3 j o s § 1 . 3 7 . T h e p a r t N m J e P n D t E ' S s l w e h s i a t h e
 p r o m u l g a t i o n e r d e r d e P y C ' A s . J . 5 8 C A e l t ' m a y e s o p i r o t h i b i t
 b y p a s s i n g u m s h a i n g d e t t h e b o i e s r e n i s s d f e e d e e r a l l a w .
 P e r m i a t r e e q u a t i o n c e n d p w l y t h m e o r s e t r i o n f l e f e e t d e e g u l a r t d h o e n s
 D e p a r t m e n t u t l ' e s t f i a n y e p a s b e p r a y n i l t e d s e **RESPONSE**
95 - 100 c D i o d t h R e s p d e s o m e d o t c s u m t e

N o c h a n g a e v e e n a d e d h F e i r p a e l r m a a r (e s s) u f l h t e c o m m e n t s .

106 COMMENT: I e n b a t s h e o t e n p i a v i m o n e d e i n a v t i e r o a m p l u n t l a i l c
 h e a b l e t h e t f o i h t e e c o m m u n i t y c o r v l a t h f e d e a r a i l 6 8 0 p b l i c y .
 A n e c e s t s h a e p a r t m e g r i d a w a i t h e r J . A 1 : 4 2 3 . 1 3 (a n d) d r e s s e s
 f a c i l e s i g o c o m p l i g i o s a W e r e q u e d e t p a r t m e p a u t h s a l u a f t i o n
 t h e i s s e p u r e i s o h f e i n a b i f h D i n s g f e t r n [2 5 .]

RESPONSE: I t h o b f a h s h e e t i d e r a p f e t r n s i t t i s h a t r e u d N e . J . A . C .
 7 : 1 4 A - 2 3 o u l r B e (e n d) e n o d i f a e t b o y p a s s a c a r a p p r b t v C e P d ,
 t h d e p a r t m e n e t v a l u a t e a n d a l s e s t o u a d e m p i t a i l o n w a n d b e r
 N . J A . 7 C : 4 A - 2 3 . S 2 (a b l t e r n e a t e a t t e r e e r a p m e n t m a g n i t u d e
 c o n s i d e r e d r e c e p t i n P s s e r o t h r a t i o n e d t h e t P e f s f l u i e n n i t t a t i o n s ,
 a n n d a o n b o g r a r a n o d i f i t o a t h e i s o n J P D E S o p e r m i s t u c h a s e s ,
 t h e t P e r m i t a t e p e p s l o y h d e p r a e r n f t a p e r m o d i f i t o a n t c i s u m e e i f i c
 c o n d i w t h i e o n h e n d a i n e g l l o u n e d d e r N . 7 J : 1 A A G r l 6 2 . 3 4 . 2 (b) .

W a i v a e r c e n s i d e r e d p a s e - b y a - s c i a s e p a r w m e d t o n s o i d e r
 p r e - w h e g a l e v i a t w a n i v a p p r o v i t a d e e c a i p f i l c i t a t i o n
 p r o v t i h e n f o r m a t i o n r e q u i r e d b y N . J : A B B 2 e a s e 4 A - 2 3 .
 a l s o f **RESPONSE- 100** c e b r h e i m o s e a g D i o d t h R e s p o n s e
 C o m m e d o t c s u m e n t .

N o c h a n g a e v e e n a d e d h F e i r p a e l r m a a r (e s s) u f l h t c i o m m e n t .

107 COMMENT: T h e e v e n u t l i n e h P e V S N C J P D E s r d i i s c O S O e s a t e d
 b y p a s s e c o n t r a e r a y p m e n t f o r t h e t B a C S O n a t d e r t n h a a t i n e

From: [Witt, Richard](#)
To: [Neugeboren, Steven](#); [Levine, MaryEllen](#)
Subject: Here's a draft paper for our meeting with Avi and Brenda
Date: Tuesday, October 29, 2013 10:48:00 AM
Attachments: [Next Steps pre-briefing for Avi rtw mel 10 29 13.docx](#)

For your review. I ran an earlier version past Andy Doyle for his comments.
I know it's a little weird having the quote from Jack upfront but I thought it was better than my paraphrasing might be.

DOJ view on *Iowa League* and non-acquiescence

Here's what Jack Lipshultz at DOJ told us earlier this year about non-acquiescence in this case:

"I did a little research to follow up on our conversation regarding the degree to which EPA would be obligated to follow the substantive aspects of the *Iowa League* decision outside the 8th Circuit should that decision stand. The bottom line is there appears to be pretty sound support for the proposition that EPA is not bound to follow *Iowa League*'s reasoning in agency actions that we either know would be reviewed outside the 8th Circuit (e.g., a facility-specific permit action in a different part of the country) or where the 8th Circuit is only one of many circuits that could properly hear a judicial challenge. In the latter situation, however, EPA would have to accept the risk that if the challenge in fact wound up in the 8th Circuit (e.g., through the multi-district panel process) a panel of the 8th Circuit would be bound to follow *Iowa League* unless and until it is overruled by the full court or the Supreme Court. I would not advise EPA to pursue nonacquiescence in actions that the agency knows to be reviewable only within the 8th Circuit. The majority of judicial decisions and legal commentary frown on such "intra-circuit" (as opposed to "inter-circuit") nonacquiescence except in very limited circumstances, and as a practical matter it would ultimately seem to serve little purpose. A good general overview of these issues can be found in Estreicher and Revesz, "Nonacquiescence by Federal Administrative Agencies," 98 *Yale Law Journal* 679 (Feb. 1989). And, of course, to the extent *Iowa League* is not changed on rehearing or cert, it is the last word on the vacatur of the Grassley Letters themselves.

At this point you should regard all this as informal, staff-level advice, and in particular, please understand that it has not been presented to or approved by the ENRD front office."

Two holdings of the case are at issue:

- (1) whether EPA's statements in the letters constituted legislative rules; and
- (2) the substantive holding related to blending as being ultra vires under the Act

Holding that statements are a legislative rule

Issue: Should EPA non-acquiesce outside the 8th Circuit with the court's jurisdictional conclusions that the statements on blending in the letters constituted a legislative rule? Our staff attorney at DOJ (ENRD) has recently explained that if we acquiesce in the determination that that 8th Circuit had jurisdiction to review the letter, then EPA would presumably treat the court's opinion as it would any other appellate opinion resulting from a petition for review of a CWA rule or other agency action properly within the scope of CWA section 509. That is, we would be bound by its substantive conclusions. If we don't acquiesce, then no parts of the 8th Circuit's opinion are binding outside the 8th Circuit.

Substantive Holding - We've discussed two possible alternative interpretations of the court's substantive holding that the EPA could follow within the 8th Circuit.

● **Narrow interpretation.** The court held only that EPA's "rule" exceeded its CWA authority because the rule imposed secondary treatment limitations on internal flows rather than at the end of the pipe.

● **Broader interpretation.** The court held that EPA lacks statutory authority to apply secondary treatment limitations to discharges of flow from one internal treatment unit to another. To the extent that the blending "rule" effectively imposes internal secondary treatment limitations on discharges from ACTIFLO units, rather than at the end of the pipe where streams are combined and discharged, it exceeds EPA's statutory authority.

Options?

● **The EPA may formally or informally non-acquiesce in the 8th Circuit jurisdictional determination that the EPA's letter response promulgated a rule** – DOJ staff cautions that any formal expression of non-acquiescence runs the risk of a challenge.

● **The EPA may choose not to take any formal position on the 8th Circuit's substantive conclusions** – Under this approach, EPA may continue to express its views about blending and the proper interpretation of the bypass regulation informally. DOJ cautions that, in the event, we express our views in written form that we should expect to be subject to judicial challenge like in *Iowa League*. There should be a complete record of the basis for written interpretation that includes all materials supporting our view to avoid what happened in *Iowa League*. Recall that in that case, all that the court had before it was material that supported the petitioner's view of the history of blending and the bypass regulation.

CENTER FOR REGULATORY REASONABLENESS

1620 I STREET, N.W.
SUITE 701
WASHINGTON, DC 20006
TELEPHONE: 202-600-7071
FAX: 202-463-4207
www.centerforregulatoryreasonableness.org

February 6, 2017

VIA EMAIL & FIRST CLASS U.S. MAIL

Mr. E. Scott Pruitt Administrator (Designate)
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Mr. Don Benton
Mr. David Schnare
Office of Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Review of EPA Decision to Continue Imposition of NPDES Permitting Prohibitions Vacated in *Iowa League of Cities v. EPA* (8th Cir. 2013)

Dear Administrator Pruitt:

The Center for Regulatory Reasonableness (“CRR”) is asking for your assistance in resolving EPA’s ongoing, unlawful nationwide imposition of two unadopted NPDES permitting prohibitions in permits and enforcement actions. These ‘ad hoc’ Obama Administration mandates are, by EPA’s own estimates, likely to impose *several hundred billion* dollars in new compliance costs. These mandates were created without rulemaking, consideration of actual environmental need, or regard for the basic structure of the Clean Water Act. That is, the prior Administration unilaterally imposed these mandates in complete disregard for the “rule of law,” statutory authority and the due process rights of the regulated community. The following briefly provides salient details regarding these unlawful actions. We would look forward to an opportunity to discuss them in detail with you and your staff.

This is not the first occasion in which EPA has attempted to enforce these unadopted NPDES prohibitions. Three years ago, the Eighth Circuit Court of Appeals, in the case *Iowa League of Cities (“ILOC”) v. EPA*, 711 F.3d 844 (8th Cir. 2013), determined that EPA’s ‘ad hoc’ revisions to the bypass rule (40 C.F.R. § 122.41(m)), secondary treatment rule (40 C.F.R. Part 133), and water quality-based permitting regulation (40 C.F.R. § 122.44(d)) violated the Administrative Procedure Act and were also beyond statutory authority (*i.e.*, “*ultra vires*”). The adversely impacted municipalities thought that this decision would end the controversy. However, within months of the ruling, EPA Office of Water staff (under the direction of *acting*

CENTER FOR REGULATORY REASONABLENESS

Assistant Administrator Nancy Stoner – a former NRDC official) worked with the Department of Justice (DOJ) to continue imposition of the vacated prohibitions outside of the Eighth Circuit.

As noted in the decision making timeline (*see* Att. 1, Timeline), EPA publicly announced its decision (on several occasions) and transmitted instructions to the regional offices and delegated states via a “desk statement” advising them to continue imposing the vacated prohibitions outside the Eighth Circuit. *See* Att. 2, Desk Statement and Att. 3, BNA Article on EPA Decision. Senior EPA management was then briefed on the decision and EPA program offices carried out the decision in permit and enforcement matters. *See*, Att. 4-6 – Post decision briefing materials and permit actions. However, the Clean Water Act does not authorize EPA to disregard the national applicability of a CWA § 509(b)(1)(E) ruling that addresses agency rulemaking or allow EPA to set non-uniform baseline NPDES program requirements. EPA itself noted this fact in various filings that sought to consolidate state challenges to EPA’s “waters of the US” rulemaking. As EPA’s second decision to limit the *ILOC* ruling to the Eighth Circuit compounded the illegality of its prior actions, CRR filed suit on this second decision in August 2014 on behalf of its municipal members across the country. *See CRR v. EPA*, No. 14-1150 (D.C. Cir.).

Once the matter was filed, however, in an effort to avoid judicial review of its actions, EPA repeatedly sought to convince the D.C. Circuit that it had never rendered a decision to limit the applicability of the *ILOC* ruling to the Eighth Circuit or informed regional offices that they should to continue imposition of the vacated permitting prohibitions outside of the Eighth Circuit. EPA attempted to carry out this duplicity by refusing to allow access to any of the relevant decision documents – asserting none existed. However, CRR was able to procure EPA’s records that unequivocally confirmed that the Agency was misrepresenting its actions. These records also revealed that DOJ advised EPA to avoid written disclosure of its decision because it might trigger another round of judicial review. *See*, Att. 7 – OGC Next Steps Briefing. This explains why EPA failed to identify, under FOIA, even the existence of the “Desk Statement” that was transmitted in November 2013 to all regional offices and delegated states nationwide to implement the Agency’s decision. To this day, many key records are still being improperly withheld under “deliberative” process claims in an attempt to avoid judicial review in this matter.

Request for Immediate Action

EPA’s actions following the *Iowa League* ruling are shameful and correction of the objectively false averments made to the D.C. Circuit needs to occur. We all understand that an agency may not implement “secret law” or abuse FOIA withholding privileges to avoid judicial review, as such action undermines the basic integrity of the Agency. Because the Court has yet to render a decision, an opportunity still exists to correct the prior Administration’s blatant factual misrepresentations. Specifically, CRR is asking the new Administration to clarify the record to the Court regarding whether the Agency did, in fact, (1) render a decision not to be bound by the *ILOC* ruling outside the Eighth Circuit, and (2) thereafter advised its Regional Offices to

CENTER FOR REGULATORY REASONABLENESS

continue imposing the permitting prohibitions vacated in *ILOC* outside the Eighth Circuit. We are certain that your review of the attached records (and others EPA is still improperly withholding) will confirm that EPA undertook these actions. Clarifying these key factual points would allow the D.C. Court, like the Eighth Circuit, to focus its attention on whether or not the Agency's ongoing imposition of the disputed permitting prohibitions, once again, constitutes an illegal regulatory action.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "John Hall", written in a cursive style.

Executive Director

Enclosures

To: Schnare, David[schnare.david@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Konkus, John[konkus.john@epa.gov]; Munoz, Charles[munoz.charles@epa.gov]
Cc: Willis, Sharnett[Willis.Sharnett@epa.gov]; Allen, Reginald[Allen.Reginald@epa.gov]
From: Reeder, John
Sent: Thur 2/2/2017 8:59:40 PM
Subject: RE: Pruitt Day 1

David,

I will talk over with you tomorrow at our general at 3:00pm...and yes we've given this some thought.

It may be better to pull the group together early next week (versus Friday), so you've had a chance to review.

Thanks

JReeder

From: Schnare, David
Sent: Thursday, February 02, 2017 1:58 PM
To: Benton, Donald <benton.donald@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Reeder, John <Reeder.John@epa.gov>; Konkus, John <konkus.john@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>
Cc: Jackson, Ryan (Inhofe) <Ryan_Jackson@inhofe.senate.gov>; Willis, Sharnett <Willis.Sharnett@epa.gov>
Subject: Pruitt Day 1

Folks:

We need to do some planning for General Pruitt's first day. He may be sworn in here or it may be somewhere else, but at some point he is going to walk in the door.

We need to schedule his first day (or two) to help get him oriented. Typically, he is met at the door and escorted to his office, shown through the suite and settled down for initial briefings. Placed on his desk would be a short list of names of people on whom he can call immediately for help, as well as the longer list of all the acting managers. We need to make up that short list.

Beyond getting his office up and running (computer, phones, etc), we need him to meet with the acting AA's and perhaps a video conference with the acting RA's. I suggest an afternoon gathering with soda and cookies for the acting AAs on Day 1.

He should be walked around the building to see what we have here and, typically, he is driven around to the other D.C. buildings where he can meet with staff and see the space.

On day 2, we might consider having an all hands meeting in the well of the Reagan building where he can say hello to everyone who wants to come and be welcomed by them. This worked well for Whitman but may not be as well received by the current staff. Still, we need him to reach out to the staff and let them know he is on their side. A video hello would also not be out of place.

Administrator Jackson also sent out an email to all staff laying out her objectives and interests. This would be very helpful for the staff. Of course, it would be a public document instantly after it was sent to the staff to it would be messaging to the world as well. We need to see what he wants and help put that together.

These are some things to think about. I'll have a meeting scheduled to spend some time discussing this further and to get agreement on some assignments. John Reeder, as acting Chief of Staff would normally have responsibility for putting all this together, and I suspect he already has a plan. If not, then, John, come with ideas.

Sharnett, could you please schedule a meeting for the EPA addressees, if not on Friday, then early next week.

Ryan, you are welcome to participate and please share any thoughts you have on this as well.

Best,

dschnare

To: Grantham, Nancy[Grantham.Nancy@epa.gov]; Benton, Donald[benton.donald@epa.gov]; Konkus, John[konkus.john@epa.gov]; Schnare, David[schnare.david@epa.gov]
From: Ericksen, Doug
Sent: Mon 2/6/2017 8:35:05 PM
Subject: RE: according to twitter: Chicago EPA employees rally today against Pruitt

This is one that we will have to discuss today.

Ericksen

From: Grantham, Nancy
Sent: Monday, February 6, 2017 3:34 PM
To: Benton, Donald <benton.donald@epa.gov>; Ericksen, Doug <ericksen.doug@epa.gov>; Konkus, John <konkus.john@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: RE: according to twitter: Chicago EPA employees rally today against Pruitt

According to comms staff in the region – about 125 participants – many signs – fair amount of media.

Thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Grantham, Nancy
Sent: Monday, February 06, 2017 12:20 PM
To: Benton, Donald <benton.donald@epa.gov>; Ericksen, Doug <ericksen.doug@epa.gov>;

Konkus, John <konkus.john@epa.gov>

Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>

Subject: according to twitter: Chicago EPA employees rally today against Pruitt

Called the regional comms folks and their understanding is this is a joint Sierra Club/AFGE rally

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

WLS-AM 890 Verified account
[@wlsam890](https://twitter.com/wlsam890)

Follow

More

Chicago EPA employees will urge the Senate to reject the nomination of Scott Pruitt as agency head at a rally today at Federal Plaza.

Christie St. Clair

Office of Public Affairs

Environmental Protection Agency

Washington, DC

o: 202-564-2880

m: 202-768-5780

To: Schnare, David[schnare.david@epa.gov]
From: David Schnare
Sent: Tue 1/31/2017 11:43:36 AM
Subject: Fwd: FYI--Scott Pruitt's Answers to Senate EPW Committee Members Followup Questions to January 18, 2017 Confirmation Hearing

Sent from my iPad

Begin forwarded message:

From: "Harlan Watson" <[REDACTED] Personal Email/Ex. 6>
To: "David Schnare" <Schnare@torcastlelaw.net>, "David Kreutzer" <david@daytonva.com>, "George Sugiyama" <[REDACTED] Personal Email/Ex. 6>
" [REDACTED] Personal Email/Ex. 6" Myron Ebell"
[REDACTED] Personal Email/Ex. 6
Subject: FYI--Scott Pruitt's Answers to Senate EPW Committee Members Followup Questions to January 18, 2017 Confirmation Hearing

FYI--Attached is a copy of Scott Pruitt's answers to Senate EPW Committee Members followup questions to his January 18, 2017 confirmation hearing. 242 pages.

<Scott Pruitt QFR Responses 01.18.2017.pdf>

From: Schnare, David

Location: 3233 WJCE

Importance: Normal

Subject: Declined: Clean Water Rule Call in Non-responsive Conference Code/Ex.6 passcode Non-responsive Conference Code/Ex.6

Start Date/Time: Wed 3/22/2017 2:00:00 PM

End Date/Time: Wed 3/22/2017 2:45:00 PM

To: dwschnare Personal Email/Ex. 6
From: Schnare, David
Sent: Wed 3/15/2017 1:23:55 PM
Subject: FW: Glyphosate not classified as a carcinogen by ECHA

From: Cleland-Hamnett, Wendy
Sent: Wednesday, March 15, 2017 9:14 AM
To: Flynn, Mike <Flynn.Mike@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: FW: Glyphosate not classified as a carcinogen by ECHA

For awareness, the European Chemicals Agency lines up with Australia, Canada and our proposed approach on RoundUp.

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

From: Keigwin, Richard
Sent: Wednesday, March 15, 2017 8:35 AM
To: Cleland-Hamnett, Wendy <[Cleland-Hamnett.Wendy@epa.gov](mailto:cleland-hamnett.wendy@epa.gov)>; Wise, Louise <Wise.Louise@epa.gov>
Cc: Layne, Arnold <Layne.Arnold@epa.gov>; Strauss, Linda <Strauss.Linda@epa.gov>; Mosby, Jackie <Mosby.Jackie@epa.gov>; Overstreet, Anne <overstreet.anne@epa.gov>; Sisco,

Debby <Sisco.Debby@epa.gov>; Dinkins, Darlene <Dinkins.Darlene@epa.gov>
Subject: Glyphosate not classified as a carcinogen by ECHA

<https://echa.europa.eu/-/glyphosate-not-classified-as-a-carcinogen-by-echa>

Rick Keigwin

Acting Director, Office of Pesticide Programs

US Environmental Protection Agency

To: Rees, Sarah[rees.sarah@epa.gov]
From: Schnare, David
Sent: Thur 3/2/2017 5:23:18 PM
Subject: 114 Notice - Tic Tic Tic

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Schnare, David
Sent: Fri 3/10/2017 2:28:00 AM
Subject: Re: RE:

Deliberative Process Privilege/Ex. 5

d

Sent from my iPhone

> On Mar 9, 2017, at 9:04 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>

> Thanks **Deliberative Process Privilege/Ex. 5**

>

> -----Original Message-----

> From: Schnare, David

> Sent: Thursday, March 9, 2017 9:03 PM

> To: Jackson, Ryan <jackson.ryan@epa.gov>

> Subject: Re:

>

Deliberative Process Privilege/Ex. 5

>

> d

>

> Sent from my iPhone

>

>> On Mar 9, 2017, at 8:30 PM, Schnare, David <schnare.david@epa.gov> wrote:

>>

>> **Deliberative Process Privilege/Ex. 5**

>>

>> Sent from my iPhone

>>

>>> On Mar 9, 2017, at 8:26 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>>>

>>> **Deliberative Process Privilege/Ex. 5**

>>>

>>> Ryan Jackson

>>> Chief of Staff

>>> U.S. EPA

>>> **Personal Phone/Ex. 6**

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
Cc: Fugh, Justina[Fugh.Justina@epa.gov]
From: Schnare, David
Sent: Mon 3/6/2017 2:48:02 PM
Subject: Re: Need to know this morning: David and the CWRule Litigation

I don't recall that we filed on that matter. I'll check again.

dschnare

Sent from my iPhone

> On Mar 6, 2017, at 9:39 AM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

>

> David and Justina- Can you please remind me whether David is recused from the litigation over the Clean Water Rule? Thanks. Kevin

>

> Kevin S. Minoli

> Acting General Counsel

> Office of General Counsel

> US Environmental Protection Agency

> Main Office Line: 202-564-8040

From: Schnare, David
Location: Administrator's Office
Importance: Normal
Subject: Declined: Chief of Staff Meeting
Start Date/Time: Fri 2/24/2017 1:00:00 PM
End Date/Time: Fri 2/24/2017 2:00:00 PM

To: Dravis, Samantha[dravis.samantha@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Schnare, David
Sent: Thur 3/2/2017 4:23:17 PM
Subject: RE:

I'm in my office.
Your call.

Deliberative Process Privilege/Ex. 5

d.

From: Dravis, Samantha
Sent: Thursday, March 2, 2017 11:18 AM
To: Schnare, David <schnare.david@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject:

FYI,

Deliberative Process Privilege/Ex. 5

To: Loren.Smith@dot.gov[Loren.Smith@dot.gov]
From: Schnare, David
Sent: Mon 3/6/2017 12:59:20 PM
Subject: CAFE

Is the FR Notice in final final and ready for signing? If so, please send it back so I can get it to the auto pen.

dschnare

Sent from my iPhone

To: Jackson, Ryan[jackson.ryan@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]
From: Schnare, David
Sent: Wed 3/15/2017 12:08:21 AM
Subject: Meeting with the Corps

Mike Shapiro asked me to come to the meeting with the Corps to discuss WOTUS. Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

d

Sent from my iPhone

From: Schnare, David
Location: WJC-N 3402
Importance: Normal
Subject: Accepted: Discussion on SES
Start Date/Time: Fri 3/3/2017 8:30:00 PM
End Date/Time: Fri 3/3/2017 9:00:00 PM

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Schnare, David
Sent: Fri 3/10/2017 2:03:26 AM
Subject: Re:

Deliberative Process Privilege/Ex. 5

d

Sent from my iPhone

> On Mar 9, 2017, at 8:30 PM, Schnare, David <schnare.david@epa.gov> wrote:

> **Deliberative Process Privilege/Ex. 5**

> Sent from my iPhone

>

>> On Mar 9, 2017, at 8:26 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

>> **Deliberative Process Privilege/Ex. 5**

>> Ryan Jackson

>> Chief of Staff

>> U.S. EPA

>> **Personal Phone/Ex. 6**

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Schnare, David
Sent: Mon 3/6/2017 12:57:15 PM
Subject: Re: EOs

When Whatley and I wrote these EOs, I also had directives prepared for the administrator's signature. When I get into the office I'll dig them out and get them around.

dschnare

Sent from my iPhone

On Mar 5, 2017, at 7:12 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Excuse typos on this. However, we have 4 EOs or Memorandums now addressing EPA. Byron will not receive this attachment until he is entirely set up so please loop him into this. We need to address how we are going to meet these EOs since some are running on a 60 day clock well running before we arrived.

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

Personal Phone/Ex. 6

<EOs and Presidential Memorandums.docx>

To: Jon Sperl[Jon.Sperl@cbo.gov]
From: Schnare, David
Sent: Tue 3/7/2017 10:25:07 PM
Subject: Re: Cost estimates for Science Committee bills

That number is fine.

dschnare

Sent from my iPhone

On Mar 7, 2017, at 5:19 PM, Jon Sperl <Jon.Sperl@cbo.gov> wrote:

Ok great, let me give you a call at 10:00am tomorrow. Is Personal Phone/Ex. 6 the correct number to reach you at?

From: Schnare, David [<mailto:schnare.david@epa.gov>]
Sent: Tuesday, March 07, 2017 5:09 PM
To: Jon Sperl
Subject: RE: Cost estimates for Science Committee bills

Jon:

I have a major regulatory meeting at 11:00 tomorrow. I am free from 9:30 am to 10:45 am and from 1:00 pm to 2:45 pm.

I have examined the current cost estimates and believe them to be far in excess of what will be needed. EPA has guidelines requiring use of information that meets our IQA requirements. If we follow that, and require of the scientific community that they provide the information required in the bill, and use only those scientific studies so buttressed, then the cost is only the cost of providing a link to the archived data on the university's servers.

It will mean that we will need to change the culture at some universities, but that is in line with recent journal practices (e.g., Nature now requiring reproducibility before publication). It may also require some changes in the grants administration in the federal government, including at EPA, but that is long overdue.

I look forward to speaking with you.

David.

David W. Schnare

Asst. Deputy Administrator

US EPA

From: Jon Sperl [<mailto:Jon.Sperl@cbo.gov>]
Sent: Tuesday, March 7, 2017 4:53 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Cost estimates for Science Committee bills

Mr. Schnare,

My name is Jon Sperl, and I'm an analyst at the Congressional Budget Office who covers the Environmental Protection Agency. I'm working on a cost estimate for the HONEST Act, which is being marked up this Thursday.

Staffers from the House Science Cmte referred me to you. Would you be available tomorrow at 11:00am to discuss how EPA might implement the bill? For context, CBO reviewed legislation very similar to the HONEST Act in April 2015 (estimate for S. 544).

Cheers,

Jon

Jon Sperl

Associate Analyst, Congressional Budget Office

Federal Estimates (EPA), State and Local Gov. Estimates (Energy/Environment/Other)

Ford House Office Building, Room 441-D

Ex. 6 Personal Privacy (PP)

jon.sperl@cbo.gov

From: Brazauskas, Joseph [<mailto:Joseph.Brazauskas@mail.house.gov>]

Sent: Monday, March 06, 2017 6:20 PM

To: Jon Sperl

Cc: Wydler, Chris; Fromm, Molly (Boyl); Yamada, Richard

Subject: RE: Cost estimates for Science Committee bills

Jon,

It was great to speak with you earlier today regarding the HONEST Act and SAB Reform Act. For obtaining the agency perspective on these bills we believe that a knowledgeable source would be the Assistant Deputy Administrator of the EPA, Dr. David Schnare. His email is schnare.david@epa.gov and phone number is

Personal Phone/Ex. 6

Thank you,

Joe

From: Fromm, Molly (Boyl)

Sent: Monday, March 6, 2017 3:09 PM

To: Robert Reese <Robert.Reese@cbo.gov>

Cc: Wydler, Chris <Chris.Wydler@mail.house.gov>; Brazauskas, Joseph <Joseph.Brazauskas@mail.house.gov>; Jon Sperl <Jon.Sperl@cbo.gov>

Subject: RE: Cost estimates for Science Committee bills

Thanks Robert.

From: Robert Reese [<mailto:Robert.Reese@cbo.gov>]
Sent: Monday, March 6, 2017 3:07 PM
To: Fromm, Molly (Boyl) <molly.fromm@mail.house.gov>
Cc: Wydler, Chris <Chris.Wydler@mail.house.gov>; Brazauskas, Joseph <Joseph.Brazauskas@mail.house.gov>; Jon Sperl <Jon.Sperl@cbo.gov>
Subject: RE: Cost estimates for Science Committee bills

Hi Molly,

Jon Sperl (cc'd) is the analyst that covers EPA related bills. I believe he would be the analyst that would cover these.

Thanks,

Robert

From: Fromm, Molly (Boyl) [<mailto:molly.fromm@mail.house.gov>]
Sent: Monday, March 06, 2017 1:37 PM
To: Robert Reese
Cc: Wydler, Chris; Brazauskas, Joseph
Subject: Cost estimates for Science Committee bills

Hi Robert, the Science Committee will mark up the attached two bills this Thursday and they will be on the Floor (considered under a rule) next week, so we need to have scores as soon as possible in order to file reports/go to the Rules Committee. The first bill, the Honest and Open New EPA Science Treatment Act of 2017, is similar to H.R. 1030 from the 114th Congress but has been modified to address the scoring issue from last Congress. We are happy to walk you through the changes, so please give me a call to discuss. The second bill, the EPA Science Advisory Board Reform Act of 2017, is nearly identical to

H.R. 1029 from the 114th. Again, please reach out with any questions – my direct is

Ex. 6 Personal Privacy (PP)

Thank you,

Molly

Molly Boyl Fromm

General Counsel and Parliamentarian

House Science, Space, and Technology Committee

Ex. 6 Personal Privacy (PP)

To: Benton, Donald[benton.donald@epa.gov]
From: Schnare, David
Sent: Tue 3/14/2017 11:15:58 PM
Subject: Fwd: Can you confirm authenticity? [WARNING: DKIM validation failed]

FYI.

Sent from my iPhone

Begin forwarded message:

From: "Hull, George" <Hull.George@epa.gov>
Date: March 14, 2017 at 7:07:40 PM EDT
To: "Schnare, David" <schnare.david@epa.gov>
Cc: "Konkus, John" <konkus.john@epa.gov>
Subject: FW: Can you confirm authenticity? [WARNING: DKIM validation failed]

David,

I wanted to make you aware that we have received an inquiry from a BNA reporter regarding an e-mail from you regarding the Administrator's approval authority. We have not responded. The reporter is asking "what the memo actually covered." I think he is calling your e-mail a memo. Since he appears to have a copy of your e-mail, it doesn't look like there would be more to say. I'm not pushing for us to respond. Let me know if you feel otherwise. - George

From: Valentine, Julia
Sent: Tuesday, March 14, 2017 6:51 PM
To: Hull, George <Hull.George@epa.gov>
Subject: Fwd: Can you confirm authenticity? [WARNING: DKIM validation failed]

Julia P. Valentine

Office of Media Relations

202.564.2663

Sent from USEPA iPhone

Begin forwarded message:

From: "Dabbs, Brian" <bdabbs@bna.com>
Date: March 14, 2017 at 5:57:41 PM EDT
To: "Valentine, Julia" <Valentine.Julia@epa.gov>, "Daguillard, Robert" <Daguillard.Robert@epa.gov>
Subject: RE: Can you confirm authenticity? [WARNING: DKIM validation failed]

I'm going to hold off publishing this until the morning. If you can please tell me what the memo actually covers? All delegated authorities such as approvals of state water quality standards and some Superfund remedies?

From: Dabbs, Brian
Sent: Tuesday, March 14, 2017 4:00 PM
To: Valentine, Julia <Valentine.Julia@epa.gov>; 'Daguillard, Robert' <Daguillard.Robert@epa.gov>
Subject: Can you confirm authenticity?

Hi. Can you confirm the authenticity of this memo?

From: Schnare, David
Sent: Thursday, March 02, 2017 9:14 AM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Delegation of authority

Because the Presidentially-appointed Assistant Administrators and Regional Administrators have yet to assume their duties, for the next 30 days, the Administrator wishes to retain approval authority for Agency actions having significant regulatory and enforcement effect. The Administrator will rely on the Acting RA's and AA's to identify and send upward any proposed decisions or final agency actions for the Administrator's review which, in the judgement of the Acting RA's and AA's would limit the flexibility of the States, limit energy resource use, impose significant costs on industry or commerce, or

otherwise likely result in significant public attention on the proposed decisions or final agency actions.

If so, why is this necessary in light of standard protocol to channel significant actions through the office of the administrator, as well as the ongoing regulatory freeze?

My deadline is 430. Thanks.

Brian Dabbs

Reporter

Bloomberg BNA

Direct: 7033413746

Mobile: 4103532509

bdabbs@bna.com

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Schnare, David
Sent: Thur 3/2/2017 3:00:33 PM
Subject: RE: Head's up from today's Administrator daily

I was certain there was something. Thanks.

d.

From: Shapiro, Mike
Sent: Thursday, March 2, 2017 9:34 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Head's up from today's Administrator daily

David,

Thanks for that feedback. There's already a system of measures linked to our strategic plan to build upon. The Administrator may want to get a briefing on the overall system and/or individual program measures. OCFO manages this process.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

From: Schnare, David
Sent: Thursday, March 02, 2017 9:09 AM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Reeder, John <Reeder.John@epa.gov>
Subject: Head's up from today's Administrator daily

The Administrator has mentioned on multiple occasions that he wants to use metrics to manage the Agency. Today he specifically discussed the pesticides/toxics program, which is on his mind due to pressing issues there. He even indicated that if that office needs more bodies, he would be prepared to see where from other offices they can be found to get the backlog reduced.

In general, he wants every program (and regions I believe) to have a set of metrics that reflect environmental quality (outcomes rather than outputs are desirable, where possible). He wants to know the current baseline and wants to see a target (including milestone date) for improvement. Examples he has mentioned in the recent past are Superfund site remediation completed and the site removed from the NPL (I'm not sure he yet has been informed why many sites remain on the list despite remediation completion), CAA attainment achieved, impaired waters list emptied.

I encourage you to get prepared to offer these kinds of metrics and work them into your reports and conversations with him.

dschnare

To: Brooks, Phillip[Brooks.Phillip@epa.gov]
From: Schnare, David
Sent: Mon 3/6/2017 12:52:35 PM
Subject: Re: We might need to look into the VW settlement fund

Phil
What is the answer?

dschnare

Sent from my iPhone

On Mar 5, 2017, at 10:24 PM, McCown, Brigham (OST) <brigham.mccown@dot.gov> wrote:


David, does EPA have a position on VW/Audi re-introducing diesel vehicles back into the market?

Best,

Brigham

B. A. McCown
Consultant - Advisor to the Secretary
U.S. Department of Transportation
Office of the Secretary
West Building W92-319
1200 New Jersey Ave, S.E.
Washington, DC 20590
(202) 366-9315 (office)

Personal Phone/Ex. 6 (mobile preferred)



Folks,

Attached are some talking points on the VW settlement that you may find helpful.

Deliberative Process Privilege/Ex. 5

David Schnare

From: Smith, Loren (OST) [mailto:Loren.Smith@dot.gov]
Sent: Friday, March 3, 2017 11:19 AM
To: Schnare, David <schnare.david@epa.gov>; Fulton, Finch (OST) <Finch.Fulton@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; McCown, Brigham (OST) <brigham.mccown@dot.gov>
Subject: We might need to look into the VW settlement fund

Dave, copying my Senior WH Advisor as well as Finch and Brig.

Sent from my iPhone

Begin forwarded message:

Date: March 3, 2017 at 10:26:20 AM EST
To: "Smith, Loren (OST)" <Loren.Smith@dot.gov>
Subject: Volkswagen Clean Air Act Civil Settlement | Enforcement | US EPA

Loren - do you have a contact on the US EPA landing team?

The recent VW settlement created a \$2.7B (yes, that's BILLION) mitigation trust fund to offset the impact of VW's actions.

As the EPA's press release (<https://www.epa.gov/enforcement/volkswagen-clean-air-act-civil-settlement>) states, "Eligible mitigation actions include projects to reduce NOx from heavy duty diesel sources near population centers, such as large trucks that make deliveries and service ports, school and transit buses, and freight switching railroad locomotives.

Thus, for example, eligible mitigation actions could include replacing or repowering older engines for newer engines at a rail switchyard, or could include replacing older city transit

buses with new electric-powered transit city buses. Eligible mitigation actions may also include, in a more limited capacity, charging infrastructure for light duty zero emission passenger vehicles."

FHWA has issued Buy America waivers to enable CMAQ recipients to buy school buses that don't comply with Buy America requirements (e.g., <https://www.fhwa.dot.gov/construction/contracts/cmaq.cfm> and <https://www.fhwa.dot.gov/construction/contracts/cmaq160517.cfm>). However, because transit buses have pretty much been the domestic domain of FTA and we have invested significant resources into technical assistance and oversight programs to ensure that transit vehicles and their manufacturers comply with Federal requirements (ADA compliance, DBE compliance, Altoona testing compliance, and Buy America compliance), we persuaded FHWA to flex its CMAQ grant applications to FTA for administration (see <https://www.fhwa.dot.gov/construction/contracts/131211.cfm>).

It would be consistent with the President's Build American policy to have transit vehicles acquired with VW Settlement funds comply with FTA's Buy America (and other) requirements - to wit, a Canadian bus manufacturer has been informing potential buyers of this funding source - <http://www.greenpowerbus.com/greenpower-buses-eligible-for-vw-settlement-funds/> and it further the Administration's interests to ensure that vehicles bought with the settlement funds were American-made (recalling that the previous Administration imposed no Buy American requirement when it initiated the "Clash for Clunkers" program in 2009, much to the chagrin of the Big Three and the UAW - see <http://mail.ofii.org/news/absence-buy-american-provision-cash-clunkers>).

To: Connors, Sandra[Connors.Sandra@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Reeder, John[Reeder.John@epa.gov]
From: Schnare, David
Sent: Thur 3/2/2017 2:33:15 PM
Subject: RE: Item from today's morning briefing with the Administrator

Today COB is fine.

d.

From: Connors, Sandra
Sent: Thursday, March 2, 2017 9:32 AM
To: Schnare, David <schnare.david@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Reeder, John <Reeder.John@epa.gov>
Subject: RE: Item from today's morning briefing with the Administrator

Both OW and R3 are active on this so I can reach out to get a paper submitted. Does COB today work or would you like this sooner?

Sandra

Sandra L. Connors
Senior Advisor

Office of the Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, Room 3317
Washington, DC 20460
(202)564-4231

connors.sandra@epa.gov

From: Schnare, David
Sent: Thursday, March 02, 2017 9:29 AM
To: Richardson, RobinH <Richardson.RobinH@epa.gov>; Flynn, Mike

<Flynn.Mike@epa.gov>; Reeder, John <Reeder.John@epa.gov>; Connors, Sandra
<Connors.Sandra@epa.gov>

Subject: Item from today's morning briefing with the Administrator

Deliberative Process Privilege/Ex. 5

dschnare

Cc: Jackson, Ryan[jackson.ryan@epa.gov]
To: Flynn, Mike[Flynn.Mike@epa.gov]
From: Schnare, David
Sent: Tue 3/14/2017 11:06:17 PM
Subject: Work schedule

As I am no longer attending the 8:00 am meetings, and need to be available until 6:30, as has been the norm, I'm shifting my normal schedule to 8:00 am. That still works out as a normal 10 hour day, the commute not included.

Let me know if that is a problem.

Sent from my iPhone

To: Flynn, Mike[Flynn.Mike@epa.gov]
From: Schnare, David
Sent: Tue 3/7/2017 9:40:26 PM
Subject: FW: CAFE Notice

I should have cc'd you on this. Sorry.

d.

From: Schnare, David
Sent: Tuesday, March 7, 2017 4:40 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: CAFE Notice

I received word that we would get a copy of the final final Notice tomorrow morning, probably signed by Secretary Chou. All we would need to do is get it signed by our Administrator and then we hold it until the comms folks tell us the public relations plans. We will send it to OFR at that point.

dschnare

To: Brown, Byron[brown.byron@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]
From: Schnare, David
Sent: Thur 3/9/2017 9:39:49 PM
Subject: RE: Cafe

The signed FR Notice is at DOT awaiting the Secretary's signature, something I'm told will happen probably on Monday. DOT has taken responsibility to get it to OFR once the White House tells them (us) to have it published. They will let us know when they've sent it over.

I've asked for a copy of the final signed document for our files.

Sarah will probably see the notice listed at OFR before I hear back from DOT, but if not, when I hear, I'll let everybody know it has gone.

In any case, no one knows when the WH will tell us to let it go.

d.

-----Original Message-----

From: Brown, Byron
Sent: Thursday, March 9, 2017 4:35 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Subject: Cafe

David - can you loop in Sarah Rees on timing of cafe notice going to FR? Thanks.

Sent from my iPhone

To: Connors, Sandra[Connors.Sandra@epa.gov]
From: Schnare, David
Sent: Tue 3/14/2017 8:07:50 PM
Subject: Re: Hot topics

Yep. Was telecommuting.

Sent from my iPhone

> On Mar 14, 2017, at 4:06 PM, Connors, Sandra <Connors.Sandra@epa.gov> wrote:

>

> Will do. Working from home? Really hard to hear.

>

> Sent from my iPhone

>

>> On Mar 14, 2017, at 3:53 PM, Schnare, David <schnare.david@epa.gov> wrote:

>>

>> Please send me whatever you send Mike or Samantha

>> thx

>> d

>>

>> Sent from my iPhone

To: Brown, Byron[brown.byron@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]
From: Schnare, David
Sent: Thur 3/9/2017 9:37:00 PM
Subject: RE: Program Meetings

Oops. Forgot to put Mike Flynn on this.

d.

From: Schnare, David
Sent: Thursday, March 9, 2017 4:36 PM
To: Brown, Byron <brown.byron@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: Program Meetings

Byron:

Mike Flynn and I hold a meeting around 3 pm every day before a day when the Administrator has an 8 am staff meeting. Samantha has already been invited to participate in those and she attended the last one. I suspect that once Brittany gets on board Sam will devolve that duty to Brittany, but that's Samantha's call.

You are certainly welcome to attend, but we don't have a rep from each major media office. Rather, we rely on the previous week's weekly reports and then any other issues that have been raised during the preceding day. OCIR and Comms attends and Sandra Connors is the coordinator. We need an OP person to cover the reg pipeline, hence Samanth. We don't typically have either OGC or OECA there as they have their own pipelines and bring issues forward in their own way.

If an AA contacts Mike or me (in our roles as Deputy Administrator), we surface those issues at the Administrator's meeting, but we don't use this process as the normal means to raise issues from the media offices. We use the session to surface "hot" issues that have come up.

Deliberative Process Privilege/Ex. 5

Mike Flynn is cc'd on this so that you get the meeting invite for these meetings.

dschnare

From: Brown, Byron
Sent: Thursday, March 9, 2017 3:50 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Program Meetings

David – are you still meeting with the program offices to flag the priority actions that are getting raised to the Administrator? Can you include Samantha and me. Thanks. -- Byron

Byron R. Brown

Deputy Chief of Staff for Policy

Office of the Administrator

U.S. Environmental Protection Agency

To: Kenny, Shannon[Kenny.Shannon@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]; Allen, Reginald[Allen.Reginald@epa.gov]; Reeder, John[Reeder.John@epa.gov]; Benton, Donald[benton.donald@epa.gov]
From: Schnare, David
Sent: Wed 2/15/2017 3:34:56 PM
Subject: Pruitt initial brief

Shannon:

I have redone my portion. It is highly sensitive, so I'm not sending it around. Please send me the final of the rest so that I can put it into final final and send it out. I have an 11:15 meeting and should be back in my office by 12:30. Please have it to me by then.

Thanks,

David

To: Flynn, Mike[Flynn.Mike@epa.gov]
From: Schnare, David
Sent: Tue 3/7/2017 9:37:40 PM
Subject: FW: Pebble mine

I guess this is how we are going to get decisions. Looks like Ryan is making them. His email looked like a directive to me, so I sent it out as a directive for action.

d.

From: Schnare, David
Sent: Tuesday, March 7, 2017 4:36 PM
To: Schwab, Justin <schwab.justin@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: Pebble mine

That is my reading of the email from Ryan.

dschnare

From: Schwab, Justin
Sent: Tuesday, March 7, 2017 4:33 PM
To: Schnare, David <schnare.david@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: Pebble mine

Deliberative Process/Attorney Client Privilege/Ex. 5

From: Schnare, David

Sent: Tuesday, March 7, 2017 4:20 PM

To: Schwab, Justin <schwab.justin@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>

Cc: Dravis, Samantha <dravis.samantha@epa.gov>

Subject: FW: Pebble mine

Deliberative Process Privilege/Ex. 5

dschnare

From: Jackson, Ryan

Sent: Tuesday, March 7, 2017 3:05 PM

To: Schnare, David <schnare.david@epa.gov>

Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>

Subject: Re: Pebble mine

Deliberative Process Privilege/Ex. 5

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

On Mar 7, 2017, at 2:28 PM, Schnare, David <schnare.david@epa.gov> wrote:

Here is a one page decision memo on Pebble mine. We have to make a decision on this next week at the latest so we can take appropriate action at law.

dschnare

<Pebble Mine Decision.docx>

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
Cc: Dunham, Sarah[Dunham.Sarah@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; **Personal Email/Ex. 6**
From: Schnare, David
Sent: Sun 3/5/2017 3:46:06 AM
Subject: Re: Executive Order on energy

Kevin

I spoke with the White House on Friday. **Deliberative Process/Attorney Client Privilege/Ex. 5**

Deliberative Process/Attorney Client Privilege/Ex. 5

dschnare

Sent from my iPhone

On Mar 4, 2017, at 7:16 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

David – As requested, **Deliberative Process/Attorney Client Privilege/Ex. 5**

Deliberative Process/Attorney Client Privilege/Ex. 5

Deliberative Process/Attorney Client Privilege/Ex. 5 Happy to discuss by phone if you would like:
202–297–6910.

Thanks, Kevin

Deliberative Process/Attorney Client Privilege/Ex. 5

Deliberative Process/Attorney Client Privilege/Ex. 5

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Mar 2, 2017, at 5:25 PM, Schnare, David <schnare.david@epa.gov> wrote:

Kevin and Sarah:

Based on our best understanding of what will be in the forthcoming Executive Order on Energy issues, the attached lists the EPA action items.

Deliberative Process/Attorney Client Privilege/Ex. 5

Thanks,

dschnare

<Energy Independence EO Implementation.docx>

To: 2017HQfirstassistants[2017HQfirstassistants@epa.gov];
2017Regionfirstassistants[2017Regionfirstassistants@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Dravis,
Samantha[dravis.samantha@epa.gov]
From: Schnare, David
Sent: Thur 3/2/2017 2:13:42 PM
Subject: Delegation of authority

Because the Presidentially-appointed Assistant Administrators and Regional Administrators have yet to assume their duties, for the next 30 days, the Administrator wishes to retain approval authority for Agency actions having significant regulatory and enforcement effect. The Administrator will rely on the Acting RA's and AA's to identify and send upward any proposed decisions or final agency actions for the Administrator's review which, in the judgement of the Acting RA's and AA's would limit the flexibility of the States, limit energy resource use, impose significant costs on industry or commerce, or otherwise likely result in significant public attention on the proposed decisions or final agency actions.

To: Vizian, Donna[Vizian.Donna@epa.gov]
From: Schnare, David
Sent: Thur 3/9/2017 8:36:22 PM
Subject: RE: we received OPM approval of your extension

Thank you so much.

d.

From: Vizian, Donna
Sent: Thursday, March 9, 2017 3:33 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: we received OPM approval of your extension

30 days for you and Holly

To: [redacted] Personal Email/Ex. 6 [redacted] Personal Email/Ex. 6
marlae.schnare@fairfaxcounty.gov[marlae.schnare@fairfaxcounty.gov]
From: Schnare, David
Sent: Tue 3/7/2017 9:26:19 PM
Subject: Schnare calendar
3-7 dws calender.pdf

To: 2017HQfirstassistants[2017HQfirstassistants@epa.gov];
2017Regionfirstassistants[2017Regionfirstassistants@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Reeder,
John[Reeder.John@epa.gov]
From: Schnare, David
Sent: Thur 3/2/2017 2:08:33 PM
Subject: Head's up from today's Administrator daily

The Administrator has mentioned on multiple occasions that he wants to use metrics to manage the Agency. Today he specifically discussed the pesticides/toxics program, which is on his mind due to pressing issues there. He even indicated that if that office needs more bodies, he would be prepared to see where from other offices they can be found to get the backlog reduced.

In general, he wants every program (and regions I believe) to have a set of metrics that reflect environmental quality (outcomes rather than outputs are desirable, where possible). He wants to know the current baseline and wants to see a target (including milestone date) for improvement. Examples he has mentioned in the recent past are Superfund site remediation completed and the site removed from the NPL (I'm not sure he yet has been informed why many sites remain on the list despite remediation completion), CAA attainment achieved, impaired waters list emptied.

I encourage you to get prepared to offer these kinds of metrics and work them into your reports and conversations with him.

dschnare

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Orlin, David[Orlin.David@epa.gov]
From: Schnare, David
Sent: Fri 3/3/2017 8:00:58 PM
Subject: RE: CAFE FR Notice

Thanks. I took all edits.

d

From: Minoli, Kevin
Sent: Friday, March 3, 2017 2:41 PM
To: Schnare, David <schnare.david@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: CAFE FR Notice

David- **Deliberative Process/Attorney Client Privilege/Ex. 5**
Deliberative Process/Attorney Client Privilege/Ex. 5

Kevin S. Minoli

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

From: Schnare, David
Sent: Wednesday, March 01, 2017 2:45 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>

Subject: CAFE FR Notice

Kevin & Sarah:

Deliberative Process/Attorney Client Privilege/Ex. 5

dschnare

To: Connors, Sandra[Connors.Sandra@epa.gov]
From: Schnare, David
Sent: Tue 3/7/2017 9:22:24 PM
Subject: RE: As requested - for your further joint review and discussion: Compiled List of Briefings/Background Papers

Thx. Hope you are having fun on your days off.

d.

From: Connors, Sandra
Sent: Tuesday, March 7, 2017 4:17 PM
To: Schnare, David <schnare.david@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Cc: Flynn, Mike <Flynn.Mike@epa.gov>
Subject: As requested - for your further joint review and discussion: Compiled List of Briefings/Background Papers

Sandra

Sandra L. Connors
Senior Advisor

Office of the Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, Room 3317
Washington, DC 20460
(202)564-4231

connors.sandra@epa.gov

To: Sarvadi, David G.[Sarvadi@khlaw.com]
From: Schnare, David
Sent: Thur 3/9/2017 8:35:19 PM
Subject: RE: We're available Wednesday.

Wednesday the 15th at 11:00 am. Room 3400 EPA North Wing. Contact me at 202-564-3073 to be escorted up.

d.

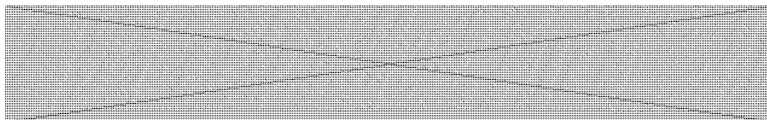
From: Sarvadi, David G. [mailto:Sarvadi@khlaw.com]
Sent: Thursday, March 9, 2017 2:58 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: We're available Wednesday.

Do you have a time in mind?

Cordially,
DGS

David G. Sarvadi
Attorney-at-Law
tel: 202-434-4249 fax 202-434-4646 | sarvadi@khlaw.com
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that will cover OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at



Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

To: Flynn, Mike[Flynn.Mike@epa.gov]
From: Schnare, David
Sent: Tue 3/14/2017 7:24:50 PM
Subject: Re: Hot Issues Check-in

Would have been nice to have had a copy of the draft.

d

Sent from my iPhone

> On Mar 14, 2017, at 2:55 PM, Flynn, Mike <Flynn.Mike@epa.gov> wrote:

>

> Conference call-in:

>

> <meeting.ics>

Non-responsive Conference Code/Ex.6

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Kenny, Shannon[Kenny.Shannon@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]
From: Schnare, David
Sent: Thur 3/2/2017 1:56:30 PM
Subject: Direction from the Administrator
Oil and Gas Info Request New Brief DRAFT v5 CLEAN.docx

Attached is the near final draft of the press release going out today on the CAA 114 methane issue (a quote is being added).

Deliberative Process/Attorney Client Privilege/Ex. 5

Please let me know when this has been sent to OFR.

dschnare

INTERNAL DRAFT –

EPA Withdraws Information Request for the Oil and Gas Industry

03/2/2017

Contact Information:

U.S. EPA Media Relations (press@epa.gov)

WASHINGTON -- The Environmental Protection Agency (EPA) is withdrawing its request that owners and operators in the oil and natural gas industry provide information on equipment and emissions at existing oil and gas operations. The withdrawal is effective immediately, meaning owners and operators – including those who have received an extension to their due dates for providing the information – are no longer required to respond. At this time, the Administrator would like to assess the need for the information that the agency was collecting through these requests.

Under the previous administration, EPA sent letters to more than 15,000 owners and operators in the oil and gas industry, requiring them to provide information. The information request comprised two parts: an “operator survey” that asked for basic information on the numbers and types of equipment at all onshore oil and gas production facilities in the United States, and a “facility survey” asking for more detailed information on sources of methane emissions and emissions control devices or practices in use by a representative sampling of facilities in several segments of the oil and gas industry. EPA is withdrawing both parts of the information request.

More information: <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/oil-and-gas-industry-information-requests>

To: Sarvadi, David G.[Sarvadi@khlaw.com]
From: Schnare, David
Sent: Fri 3/3/2017 7:52:52 PM
Subject: RE: May need to set up a meeting

No names available to me yet. Pruitt is very engaged on TSCA. Budget mark hit everyone but, as you know, the President's budget is dead on arrival. Also, Pruitt is prepared to take bodies from elsewhere to clear the TSCA/FIFRA backlogs.

d.

From: Sarvadi, David G. [mailto:Sarvadi@khlaw.com]
Sent: Friday, March 3, 2017 2:50 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: May need to set up a meeting

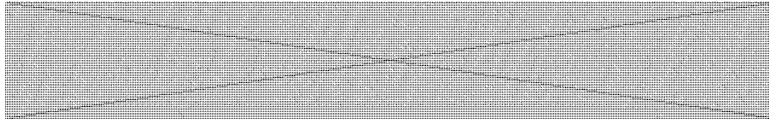
On the 14th or 15th. What's the word on a permanent AA for OPTS? They are in dire need of adult supervision. I saw a press report that Pruitt is partially focused on the requirements of the TSCA reform bill that passed last June. Also saw a comment that the budget proposal that OMB released did not do severe damage to the TSCA/Pesticide programs.

Still treading water?

Cordially,
DGS

David G. Sarvadi
Attorney-at-Law
tel: 202-434-4249 fax 202-434-4646 | sarvadi@khlaw.com
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that will cover OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at



Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Schnare, David
Sent: Tue 3/14/2017 7:23:46 PM
Subject: Waiver for non-us steel

Pruitt declined to allow the waiver. Get Jackson and Dravis information sufficient to show that you have done your due diligence and there is no US source of the steel necessary for the 62 inch pipe.

dschnare

Sent from my iPhone

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Schnare, David
Sent: Fri 3/3/2017 7:40:59 PM
Subject: CAFE TIC TIC TIC

To: Knapp, Kristien[Knapp.Kristien@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]
From: Schnare, David
Sent: Thur 3/9/2017 8:29:07 PM
Subject: RE: Midterm notice

Yea !!!!!

And thanks.

d.

From: Knapp, Kristien
Sent: Thursday, March 9, 2017 3:29 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>
Subject: Re: Midterm notice

I just handed the package to Loren directly. He said DOT is holding on to it, for signature in a couple days.

Sent from my iPhone

On Mar 9, 2017, at 2:50 PM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:

Yes .. we just got them and Kristien is on her way

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Schnare, David
Sent: Thursday, March 09, 2017 2:42 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Knapp, Kristien <Knapp.Kristien@epa.gov>
Subject: RE: Midterm notice

Do that as well.

d.

From: Grantham, Nancy
Sent: Thursday, March 9, 2017 2:41 PM
To: Knapp, Kristien <Knapp.Kristien@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: RE: Midterm notice

If come over here – we can call our contacts there. Thanks ng

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

From: Knapp, Kristien
Sent: Thursday, March 09, 2017 2:40 PM
To: Schnare, David <schnare.david@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>

Subject: FW: Midterm notice

Autopen signature complete.

I'm now ready to get it to DOT. David, is there someone in particular I should get in touch with?

To: Davis, Patrick[davis.patrick@epa.gov]
Cc: Benton, Donald[benton.donald@epa.gov]; Reeder, John[Reeder.John@epa.gov]
From: Schnare, David
Sent: Tue 2/21/2017 9:45:11 PM
Subject: Re: intel briefing for Administrator Pruitt

Check with John Reeder

Sent from my iPhone

On Feb 21, 2017, at 4:43 PM, Davis, Patrick <davis.patrick@epa.gov> wrote:

Dave and Don,

Dave Kling asked me today when the intel briefing for Administrator Pruitt and the chief of staff will be scheduled. Do you know?

Thanks,
Patrick Davis

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Schnare, David
Sent: Tue 3/14/2017 5:44:31 PM
Subject: Re: Briefing On EPA Energy & Environmental Policy

If you can tell me what the Administrators position on taking responsibility for reexamining the science of climate change, I'll do it.

Sent from my iPhone

On Mar 14, 2017, at 1:32 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

It would be good for us to have a presence there. I'm not sure who to suggest.

From: Schnare, David
Sent: Tuesday, March 14, 2017 12:11 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Hull, George <Hull.George@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>
Subject: Fwd: Briefing On EPA Energy & Environmental Policy

Ryan

Do you want to send anyone, and if so, who.

We need to get back to Martini asap.

dschnare

Sent from my iPhone

Begin forwarded message:

From: Matthew Martini <mmartini@CRCPublicRelations.com>
Date: March 14, 2017 at 12:07:45 PM EDT
To: "schnare.david@epa.gov" <schnare.david@epa.gov>
Subject: Briefing On EPA Energy & Environmental Policy

David,

JP Morgan is hosting a trip to DC for folks who are focused on energy. In particular, this group is focused on the impact of current and future U.S. Energy policy on oil and gas both domestically and internationally. They are meeting with members of Congress and committee staff to discuss these matters.

Please, let me know if someone at EPA is available to attend to provide a briefing on the direction of EPA.

Key areas of discussion:

- U.S. policy on domestic energy
- Border Adjustment Tax (BAT)
- Renewable Fuels Standards
- Environmental Policy, including Climate Change
- Foreign Trade
- Geopolitics' influence on commodity prices

They have secured a meeting space at the St. Regis hotel so they do have the ability to host meetings if necessary.

Event: J.P. Morgan Washington D.C. Energy Policy Trip

When: Monday, March 20 & Tuesday, March 21, 2017

Where: Washington, DC

Thank you,

Matt

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Schnare, David
Sent: Tue 3/7/2017 9:09:12 PM
Subject: RE: List of Requested Briefings

Ryan:

We need hard decisions on some of these things. Let's discuss on how to deal with that. I think maybe you have those decisions in hand, but I'm not sure the rest of us know what they are, something we need to close the loop and put some of these to bed.

d.

From: Jackson, Ryan
Sent: Tuesday, March 7, 2017 2:56 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Flynn, Mike <Flynn.Mike@epa.gov>; Kenny, Shannon <Kenny.Shannon@epa.gov>; Reeder, John <Reeder.John@epa.gov>; Schnare, David <schnare.david@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>; Anderson, Denise <anderson.denise@epa.gov>; Dickerson, Aaron <dickerson.aaron@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>
Subject: Re: List of Requested Briefings

We are simply looking for paper initially. If he would like a staff briefing we can schedule that. I'm sorry for not making that more clear. The briefings already prepared in a number of issues like the point of obligation, chry... pesticide, gold king, and flint have been very digestible and ether takes care of the issue for the moment or has informed discussions about it he has had with members of Congress or other cabinet secretaries. I believe it's been going well.

Ryan Jackson

Chief of Staff

U.S. EPA

Personal Matters/Ex. 6

On Mar 7, 2017, at 2:25 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Mike,

For what it's worth my view is that as the Administrator's time has been extremely limited as of late, that the program office briefings would take place at the staff level (to Byron, Schnare, Ryan Jackson and me) and then that core group would present policy options to the Administrator on key issues based upon those program briefings. I realize that is less than ideal, but on some of these more timely issues with hard deadlines, I think finding the time for a longer briefing with Administrator Pruitt will be challenging (though not impossible).

That said, I really defer to Ryan how to proceed on this and I've offered my insight as to what issues are most pressing and need attention one way or the other.

Best,

Samantha

From: Flynn, Mike

Sent: Tuesday, March 7, 2017 12:11 PM

To: Dravis, Samantha <dravis.samantha@epa.gov>; Kenny, Shannon <Kenny.Shannon@epa.gov>

Cc: Reeder, John <Reeder.John@epa.gov>; Schnare, David <schnare.david@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>; Anderson, Denise <anderson.denise@epa.gov>; Dickerson, Aaron <dickerson.aaron@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>

Subject: List of Requested Briefings

Hi Samantha,

As you know, there are numerous briefings for the Administrator that have been requested by the program offices, that Ryan has asked to set up, or may have been mentioned in the program office briefings for the Administrator (a couple of which you attended). To help Ryan and the scheduling team, I had folks put together a list of the requested briefings (attached). The first group are the ones that seem to be the most urgent. We've gone over this with Michelle and wanted to get your and your team's input before sharing with Ryan. I'd like to share with Ryan later today so he can confirm which meetings he would like to

be scheduled with the Administrator in the short term.

This is just to jump start getting key meetings on the calendar for the Administrator. I realize more discussions with Ryan will be needed going forward to make sure we have a smooth process with everyone involved who needs to be.

Thanks for your help.

Mike

Mike Flynn

Acting Deputy Administrator

U.S. Environmental Protection Agency

202-564-4711

To: Sugiyama, George[sugiyama.george@epa.gov]
From: Schnare, David
Sent: Fri 3/3/2017 7:40:20 PM
Subject: RE: meeting on March 23 around noon.

I'll do it, but I'll need talking points. Can you have someone work some up?

d.

From: Sugiyama, George
Sent: Friday, March 3, 2017 2:28 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: meeting on March 23 around noon.

I have been asked to inquire about your availability on March 23 to speak to a group call NEDA (National Environmental Development Association) . It is an over 30 year old group of companies which pursue an eclectic variety of environmental issues, mostly air issues. As a heads up the general counsel is my wife Leslie Sue Ritts. But I am doing this on behalf of their President Al Collins, VP Occidental Petroleum. Invited attendees which have accepted include , Proctor and Gamble, Eli Lilly, BP America, Merck & c0mpany, Koch Public Sectors, Boeing, Phillips 66, Georgia Pacific, and on the phone Boeing folks from Washington DC. Based on past meetings it is expected that 5-6 more will attend.

The meeting is on March 23 at Occidental offices at 1701 Pennsylvania. Ave. and the time slot is between 10-1, to give you some latitude. The talk is expected to be 45 min to 1 hour.

Topics would be Clean Air Act transition issues: ozone NAAQS implementation and background/international ozone transport, refrigerants as part of the Obama Climate Action Plan, permitting reform and streamlining (the entire gamut of Bush era rulemakings like help with debottlenecking, fugitives, project netting), the "once in" policy and the regional consistency rule that EPA reversed after the D.C. Circuit told them to enforce it.

A positive response would be most appreciated. Thank you

George

To: Kaplan, Robert[kaplan.robert@epa.gov]
From: Schnare, David
Sent: Tue 3/14/2017 5:24:53 PM
Subject: Re: Eramet

Thanks Bob
d

Sent from my iPhone

On Mar 14, 2017, at 1:23 PM, Kaplan, Robert <kaplan.robert@epa.gov> wrote:

David,

I'm reaching out to Eramet directly via our Air Director in R5 to see if we have adequately addressed their concerns. We will convey our commitment to ensure that 90 jobs are not lost because of the rule. I have heard that they are also concerned about a digital camera requirement in the rule (not a financial or time-to-comply issue). We'll take into consideration whatever they want to raise with us and Ohio.

Hopefully we can get Eramet comfortable that we and Ohio are working together and addressing issues together.

- Bob

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Cell: 312-515-9827

Direct: 312-886-1499

Main: 312- 886-3000

From: Schnare, David
Location: WJC-N 3415
Importance: Normal
Subject: Accepted: Hot Issues Check-in
Start Date/Time: Mon 3/6/2017 8:30:00 PM
End Date/Time: Mon 3/6/2017 9:00:00 PM

To: Bromberg, Kevin L.[kevin.bromberg@sba.gov]; Brown, Byron[brown.byron@epa.gov]
Cc: Sugiyama, George[sugiyama.george@epa.gov]; Kreutzer, David[kreutzer.david@epa.gov]
From: Schnare, David
Sent: Thur 3/9/2017 7:47:42 PM
Subject: RE: Hard Rock Mining Meeting

Kevin:

Byron has the lead on OLEM issues and you should contact him directly, as necessary.

dschnare

From: Bromberg, Kevin L. [mailto:kevin.bromberg@sba.gov]
Sent: Thursday, March 9, 2017 2:33 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Sugiyama, George <sugiyama.george@epa.gov>; Kreutzer, David <kreutzer.david@epa.gov>
Subject: Hard Rock Mining Meeting

My meeting (accompanied by our economist, Michael McManus) is scheduled for Tuesday April 21 at 11 AM with Barry Breen, and presumably OLEM staff. You asked me to tell you so that you could send someone to attend. Charley Maresca, the Director for Interagency Affairs and me are also meeting with Samantha Dravis on the following day to address this and other issues (SBREFA panel procedures and regulatory reform).

At this meeting with OLEM, I'd like to discuss our comment letter, EPA's preliminary response to this letter, and EPA's plans to work on this rulemaking during the 120 day comment period extension. Deliberative Process Privilege/Ex. 5 We also could briefly address 108(b) and the three "other" industries.

David, who is being assigned to this issue within the transition team (and possibly OP?)

George, I thought I'd copy you on this note since this issue is of major significance. Feel free to contact me.

Kevin

📍 Kevin Bromberg

Assistant Chief Counsel for Environmental Policy

📍 SBA // Office of Advocacy

409 3rd St. SW, Washington, D.C. 20416

✉ kevin.bromberg@sba.gov 📞 202.481.2963

📞 202.205.6964



To: Sarvadi, David G.[Sarvadi@khlaw.com]
From: Schnare, David
Sent: Tue 3/7/2017 7:12:55 PM
Subject: RE: I'm not making any progress with the TSCA new chemicals branch

The 15th in the afternoon?

d.

From: Sarvadi, David G. [mailto:Sarvadi@khlaw.com]
Sent: Tuesday, March 7, 2017 2:11 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: I'm not making any progress with the TSCA new chemicals branch

No, I'm at the ABA meeting in Florida all week and I'm moderating a panel Thursday until 11:30. Can do Monday AM but Monday PM I'm in a meeting with pesticides. Tuesday and Wednesday next are pretty open.

DGS

David Sarvadi
Keller and Heckman llp
202-434-4249

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Tuesday, March 07, 2017 1:43 PM
To: Sarvadi, David G.
Subject: RE: I'm not making any progress with the TSCA new chemicals branch

Can you come over here on Thursday afternoon this week?

From: Sarvadi, David G. [mailto:Sarvadi@khlaw.com]

Sent: Tuesday, March 7, 2017 1:31 PM

To: Schnare, David <schnare.david@epa.gov>

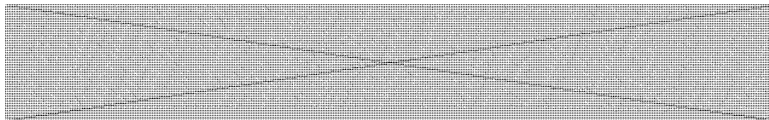
Subject: I'm not making any progress with the TSCA new chemicals branch

Can we get a half hour on Tuesday or Wednesday next week to explain our issues? We're on a critical path where lack of resolution before the end of the month means forcing the business offshore.

Cordially,
DGS

David G. Sarvadi
Attorney-at-Law
tel: 202-434-4249 fax 202-434-4646 | sarvadi@khlaw.com
1001 G Street NW, Suite 500 West | Washington, DC 20001

Keller and Heckman LLP Partner Manesh Rath hosts his groundbreaking OSHA 30/30, a webinar series that will cover OSHA issues for 30 minutes every 30 days. www.khlaw.com/OSHA3030. Mr. Rath is a member of the occupational safety and health team at



Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

If you print, please recycle.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure. If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

To: Smith, Loren (OST)[Loren.Smith@dot.gov]
From: Schnare, David
Sent: Tue 3/7/2017 6:45:43 PM
Subject: Mid-Term

Pruitt wants to know where the Notice is.

Here's an interesting article:

E&E News

<http://www.eenews.net/greenwire/2017/03/07/stories/1060051074>

Enviros, lawmakers try to head off regulatory rollbacks

By Camille von Kaenel 3/7/17

Environmental groups, lawmakers and national security advocates are trying to pre-empt any administration move to soften fuel economy standards by warning that such action would be caught up in lengthy litigation and create uncertainty for automakers.

As early as this week, U.S. EPA and the Transportation Department will begin reconsidering whether to loosen vehicle emissions standards by restarting a review that the Obama administration finalized in its final days.

The Trump administration is also considering revoking California's waiver to set its own, stronger vehicle emission rules, according to several media reports.

California, plus 12 states that have followed its lead, are ready to engage in a lengthy court battle to protect the status quo, environmental advocates warned.

There is no precedent or clause in the Clean Air Act for revoking a waiver that has already been granted. California leaders, including state Senate President Pro Tem Kevin de León (D), have vowed a fierce fight.

"California and other states would have a very strong legal counterattack, which also illustrates why this whole change in course is so counterproductive," said Ken Kimmell, president of the Union of Concerned Scientists.

"All it's going to do is tie everything up in litigation and put automakers in a worse place, which

is having uncertainty on whether they need to meet these 2025 standards," he said.

'Swerving off a cliff'

It's unlikely that restarting the so-called midterm review — which would open the possibility for EPA to loosen existing 2025 targets for vehicle emissions — could itself be subject to legal challenge.

Still, the Obama administration's decision to close the review in an attempt to lock in 2025 rules turned the process into a lightning rod.

Twelve Democratic senators warned EPA Administrator Scott Pruitt in a letter today that reopening the review would "weaken our energy security, harm consumers, and increase global warming pollution."

They also said the move would "create needless uncertainty for the auto industry and hinder the industry's ongoing process."

Sen. Ed Markey (D-Mass.), who co-authored the 2007 legislation to increase fuel economy, told reporters during a conference call that "Auto companies want the standards to ease, but by jumping in a speeding car with the Trump administration, they're putting themselves in danger of swerving off a cliff."

Neither automakers nor the administration have signaled what outcome they want from the review, other than putting it back on schedule for completion by April 2018.

Car companies have long wanted to eliminate slight differences between the standards put forward by EPA, the National Highway Traffic Safety Administration and the California Air Resources Board to avoid any uncertainty.

Environmental advocates decried any possibility that the targets would ultimately be loosened, which would require a new rule. Greens said they would expect opposition to extend beyond the normal rulemaking process.

"If the Trump administration does want to weaken the standards, you can count on the fact that states would want to keep them and would join in a lawsuit to maintain them," said Kimmell.

The administration would have to put forward significant new data to back a conclusion different from the one by the Obama administration to overcome legal challenges, he said.

'Snapback'?

EPA, in a massive technical report last summer, found that automakers could continue to meet and exceed the standards with available and impending technologies at little extra cost, echoing a similar finding by the National Academies of Sciences, Engineering and Medicine.

Automakers say those findings do not take changing consumer preferences for big trucks over small, fuel-efficient cars enough into account.

Dan Becker, director of the Safe Climate Campaign, also warned about the possibility of a "snapback" to tighter rules after the Trump administration.

Securing America's Future Energy CEO Robbie Diamond, who advocates for fuel economy standards as a way of boosting national security and reducing dependence on foreign oil, warned that "just fighting court cases" might get in the way of reducing greenhouse gas emissions.

"California and the government should be fighting [OPEC] together," he said. "If we fight each one of these battles — who should regulate, and why should they regulate, or how many years should it be — each of these battles takes time, and we will ultimately lose the war."

Diamond said he has advised administration officials to use the new review to look at regulating transportation as a whole rather than just on a vehicle-by-vehicle basis.

The goal would be to better take into account the environmental and fuel-use benefits of autonomous vehicles and ride-sharing networks. The plan includes some relief for automakers and early planning for rules beyond 2025.

"Going back to the normal schedule is not the end of the world, but it can be used as an opportunity to bring new technologies to the table to be folded into the standards," said Diamond.

To: Benton, Donald[benton.donald@epa.gov]; Williams, Michael B.
[redacted] EOP/Ex. 6
Cc: Campau, Anthony [redacted] EOP/Ex. 6 Dravis,
Samantha[dravis.samantha@epa.gov]; Kenny, Shannon[Kenny.Shannon@epa.gov]; Rees,
Sarah[rees.sarah@epa.gov]
From: Schnare, David
Sent: Wed 3/1/2017 10:42:46 PM
Subject: RE: Regulatory Review Update

Don and Michael:

The regulatory pipeline is an Office of Policy responsibility. We now have an Associate Administrator for the Office of Policy (Samantha Dravis). She has begun to engage in review of the OMB (midnight regs) list along with her staff. They are the proper terminal to discuss these issues. I am cc'ing Ms. Dravis and her regulatory staff. Please coordinate with them.

David Schnare

From: Benton, Donald
Sent: Wednesday, March 1, 2017 5:13 PM
To: Williams, Michael B. [redacted] EOP/Ex. 6 Schnare, David
<schnare.david@epa.gov>
Cc: Campau, Anthony [redacted] EOP/Ex. 6
Subject: RE: Regulatory Review Update

I am hoping David is available for a 2pm tomorrow. We will confirm at 9:30am.

Will you be available?

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Williams, Michael B. **EOP/Ex. 6** **EOP/Ex. 6**
Sent: Tuesday, February 28, 2017 6:11 PM
To: Schnare, David <schnare.david@epa.gov>; Benton, Donald <benton.donald@epa.gov>
Cc: Campau, Anthony **EOP/Ex. 6**
Subject: Regulatory Review Update

David and Don,

Thanks so much for your work on the pending regulations list you sent last week. Do you have time this week to jump on a call with Anthony and me to discuss your comments and recommended actions? **Deliberative Process Privilege/Ex. 5**

Deliberative Process Privilege/Ex. 5 Feel free to include any other relevant members of your team.

Best,

Michael

Michael B. Williams

Legal

Office of Management and Budget

(c) **Personal Matters/Ex. 6**

To: Catanzaro, Michael J. EOP/WHO
From: Schnare, David
Sent: Fri 3/3/2017 6:43:52 PM
Subject: Energy Independence EO

EOP/Ex. 6

Mike:

I'm trying to get EPA prepared for this EO; getting ANPRM's ready for a quick hit, making plans to make plans, etc.

I'm working from a redline draft of the EO that is of questionable provenance and may be very stale. This version does not have anything on either withdrawing the social cost of carbon or having EPA re-examine the GHG science in anticipation of making a new endangerment finding. The latter is, of course, the essential task as it pulls the lynchpin of all climate work here at EPA. We are currently spending \$164 Million on GHG/climate issues.

I just spoke with Doug Domenich (sp) over at DOI. He said you had given him the most recent version of the EO and that both SCC and endangerment were still in it. I'm wondering if there is an Energy EO and also a Climate EO, the latter of which I have not seen.

Can you give me a quick call to help sort this?

David Schnare 202-564-3073

To: Grantham, Nancy[Grantham.Nancy@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]
From: Schnare, David
Sent: Thur 3/9/2017 7:41:57 PM
Subject: RE: Midterm notice

Do that as well.

d.

From: Grantham, Nancy
Sent: Thursday, March 9, 2017 2:41 PM
To: Knapp, Kristien <Knapp.Kristien@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: RE: Midterm notice

If come over here – we can call our contacts there. Thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Knapp, Kristien
Sent: Thursday, March 09, 2017 2:40 PM
To: Schnare, David <schnare.david@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: FW: Midterm notice

Autopen signature complete.

I'm now ready to get it to DOT. David, is there someone in particular I should get in touch with?

From: Schnare, David
Location: WJC-N 5400 + Video with RTP +
Importance: Normal
Subject: Accepted: Regional Haze
Start Date/Time: Fri 3/3/2017 9:00:00 PM
End Date/Time: Fri 3/3/2017 9:30:00 PM

Personal Matters/Ex. 6

To: Knapp, Kristien[Knapp.Kristien@epa.gov]
Cc: Grantham, Nancy[Grantham.Nancy@epa.gov]
From: Schnare, David
Sent: Thur 3/9/2017 7:41:17 PM
Subject: Re: Midterm notice

Loren Smith. Personal Matters/Ex. 6

Sent from my iPhone

On Mar 9, 2017, at 2:39 PM, Knapp, Kristien <Knapp.Kristien@epa.gov> wrote:

Autopen signature complete.

I'm now ready to get it to DOT. David, is there someone in particular I should get in touch with?

<image2017-03-09-144805.pdf>

To: Smith, Loren (OST)[Loren.Smith@dot.gov]; Jackson, Ryan[jackson.ryan@epa.gov];
Richardson, RobinH[Richardson.RobinH@epa.gov]
From: Schnare, David
Sent: Tue 3/14/2017 3:49:13 PM
Subject: Re: David - plan re congressional rollout?

Robin can you coordinate this?

dschnare

Sent from my iPhone

On Mar 14, 2017, at 11:21 AM, Smith, Loren (OST) <Loren.Smith@dot.gov> wrote:

We would like to contact members of our oversight committees with a short statement on the joint notice, at the appropriate moment. Can you loop me in with your folks? Then we can reach out to WH as appropriate.

+++

Loren Smith

U.S. Department of Transportation

West Building – W85-115

loren.smith@dot.gov

202-430-2952

To: Schmidt, Lorie[Schmidt.Lorie@epa.gov]
Cc: Packard, Elise[Packard.Elise@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]
From: Schnare, David
Sent: Tue 3/7/2017 5:33:59 PM
Subject: Re: Draft energy EO FR notices

Thank you.

dschnare

Sent from my iPhone

On Mar 7, 2017, at 11:48 AM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

David

Kevin asked me to send you these two draft FR notices to implement the draft energy EO. One addresses the CO2 standards for both new and existing power plants (including the legal memo if you want to call it out separately), and one addresses methane standards for the oil and gas industry.

Sarah Dunham has reviewed these.

Let us know if you need something else.

Lorie

Lorie Schmidt

Associate General Counsel for Air and Radiation

Office of General Counsel

US Environmental Protection Agency

(202)564-1681

<noi to reconsider oil and gas--2 (003) (002).docx>

<noi to reconsider oil and gas--2 (003).docx>

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Schnare, David
Sent: Wed 3/1/2017 10:14:12 PM
Subject: Call me asap

Sent from my iPhone

To: Richardson, RobinH[Richardson.RobinH@epa.gov]
From: Schnare, David
Sent: Fri 3/3/2017 6:33:56 PM
Subject: RE: 4pm w/OAR on Haze

Works!
d

-----Original Message-----

From: Richardson, RobinH
Sent: Friday, March 3, 2017 1:28 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: 4pm w/OAR on Haze

Hi David - OAR is setting up time at 4pm to walk through the information in their conference so RTP is able to participate. I'll swing by to walk over. Ok? Invite is on its way. Best, Robin

Robin H Richardson
PDAA, EPA/OCIR
(202) 564-3358 (desk)
(703) 581-5814 (cell)
richardson.robinh@epa.gov

To: Gordon, Rob[Rob.Gordon@mail.house.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]
Cc: Santini, Christopher[Christopher.Santini@mail.house.gov]
From: Schnare, David
Sent: Thur 3/9/2017 6:30:46 PM
Subject: RE: Gold King Mine

Robin:

I will brief you on this after my return from the meeting. Your address contained a typo so you did not receive the original email.

dschnare

From: Gordon, Rob [mailto:Rob.Gordon@mail.house.gov]
Sent: Thursday, March 9, 2017 12:31 PM
To: 'Richardson.Robin@epa.gov' <Richardson.Robin@epa.gov>
Cc: Schnare, David <schnare.david@epa.gov>; Santini, Christopher <Christopher.Santini@mail.house.gov>
Subject: Gold King Mine

Robin:

We would like to advise David Schnare of Committee oversight on Gold King Mine issues this Friday at 9:00am. We are located in the O'Neill House Office Building. After clearing security at O'Neill visitors need to be escorted. Our clerk, Wes Gwinn, can be reached at 202.225.7749 when visitors arrive in the lobby.

Best,

Rob Gordon

Staff Director

Subcommittee on Oversight & Investigations

Senior Advisor for Endangered Species

House Committee on Natural Resources

Direct: 202.226.4630

To: Smith, Loren (OST)[Loren.Smith@dot.gov]
From: Schnare, David
Sent: Tue 2/21/2017 9:06:50 PM
Subject: RE: URGENT Letter from Alliance of Automobile Manufacturers to EPA Administrator G. Scott Pruitt

Loren:

The email system blocked the attachment. Can you save it as a pdf and send it to me?

d.

From: Smith, Loren (OST) [mailto:Loren.Smith@dot.gov]
Sent: Tuesday, February 21, 2017 3:16 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: FW: URGENT Letter from Alliance of Automobile Manufacturers to EPA Administrator G. Scott Pruitt
Importance: High

From: Wood, Steve (NHTSA)
Sent: Tuesday, February 21, 2017 1:11 PM
To: Smith, Loren (OST)
Subject: FW: URGENT Letter from Alliance of Automobile Manufacturers to EPA Administrator G. Scott Pruitt
Importance: High

From: Tamm, James (NHTSA)
Sent: Tuesday, February 21, 2017 1:08 PM
To: Danielson, Jack (NHTSA); Shelton, Terry (NHTSA); Posten, Ryan (NHTSA); Wood, Steve (NHTSA); Mullins, Timothy (OST)

Cc: Schade, Rebecca (NHTSA)

Subject: FW: URGENT Letter from Alliance of Automobile Manufacturers to EPA Administrator G. Scott Pruitt

Importance: High

From: Susan Conti [<mailto:sconti@autoalliance.org>]

Sent: Tuesday, February 21, 2017 1:02 PM

To: pruitt.scott@epa.gov; pruitt.gscott@epa.gov

Cc: McNerney, Marianne (OST) <marianne.mcinerney@dot.gov>; grundler.christopher@epa.gov; Bill Charmley <charmley.william@epa.gov>; olechiw.michael@epa.gov; Green, Kevin (VOLPE) <Kevin.Green@dot.gov>; Tamm, James (NHTSA) <james.tamm@dot.gov>; Schade, Rebecca (NHTSA) <rebecca.schade@dot.gov>; annette.hebert@arb.ca.gov; michael.mccarthy@arb.ca.gov; Chris Nevers <CNevers@autoalliance.org>; David Schwietert <DSchwietert@autoalliance.org>; Gloria Bergquist <GBERGQUIST@autoalliance.org>; John Whatley <JWhatley@autoalliance.org>
Subject: URGENT Letter from Alliance of Automobile Manufacturers to EPA Administrator G. Scott Pruitt

Importance: High

Dear Administrator Pruitt:

The attached letter, on behalf of the Alliance of Automobile Manufacturers, requests that the U.S. Environmental Protection Agency (EPA) withdraw the Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation (Final Determination) which was announced on January 13, 2017 but never published in the *Federal Register*.

The Alliance is not asking EPA to make a different Final Determination at this time. All we are asking is that EPA withdraw the Final Determination and resume the Midterm Evaluation, in conjunction with NHTSA, consistent with the timetable embodied in EPA's own regulations. We believe that, if carried out as intended, the Midterm Evaluation can lead to an outcome that makes sense for all affected stakeholders and for society as a whole.

The Alliance welcomes the opportunity for further dialogue. Please contact me at your earliest convenience to discuss this matter further. Thank you.

Mitch Bainwol
President and CEO

To: Jackson, Ryan[jackson.ryan@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]
From: Schnare, David
Sent: Tue 3/14/2017 2:45:41 PM
Subject: I'm telecommuting today

Sent from my iPhone

To: Bromberg, Kevin L.[kevin.bromberg@sba.gov]
From: Schnare, David
Sent: Wed 3/1/2017 9:05:53 PM
Subject: RE: CERCLA 108(b)`

Barnes can find my phone number.

d.

From: Bromberg, Kevin L. [mailto:kevin.bromberg@sba.gov]
Sent: Wednesday, March 1, 2017 3:21 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: CERCLA 108(b)`

When is there a good time for a quick chat this afternoon? I'm basically out of office most of tmw . But I will be at TRI briefing at 3 PM tomorrow – in Clinton East.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Talking to Rich Mattick, OP I want to get a dialogue moving between Barnes Johnson and your office.

📧 Kevin Bromberg

Assistant Chief Counsel for Environmental Policy

📍 SBA // Office of Advocacy

409 3rd St. SW, Washington, D.C. 20416

✉ kevin.bromberg@sba.gov 📞 202.481.2963

📠 202.205.6964



To: Dravis, Samantha[dravis.samantha@epa.gov]
From: Schnare, David
Sent: Fri 3/3/2017 6:33:39 PM
Subject: RE: 2pm call

Sure. See you then.

d.

From: Dravis, Samantha
Sent: Friday, March 3, 2017 1:28 PM
To: Schnare, David <schnare.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: 2pm call

Unless there is a preferable location, we can do this in my office if you're amenable.

SD

To: Grantham, Nancy[Grantham.Nancy@epa.gov]
Cc: Reeder, John[Reeder.John@epa.gov]
From: Schnare, David
Sent: Thur 3/9/2017 4:53:57 PM
Subject: Re: ryan said he told you we are okay to sign the cafe FR today --

Do it

Sent from my iPhone

On Mar 9, 2017, at 11:52 AM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:

<image001.gif>

If we get it to john reeder, he will get is autopenned and then we can figure out who will take to DOT.

Thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

To: Connors, Sandra[Connors.Sandra@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
From: Schnare, David
Sent: Tue 3/14/2017 1:04:30 AM
Subject: Fwd: American Iron and Steel Waiver Request
[Akron OH Availability Waiver 2 13 17.docx](#)
[ATT00001.htm](#)
[transmittal memo 2017 akron OH \(FINAL\).docx](#)
[ATT00002.htm](#)

Sent from my iPhone

Begin forwarded message:

From: "Shapiro, Mike" <Shapiro.Mike@epa.gov>
Date: March 10, 2017 at 4:59:05 PM EST
To: "Flynn, Mike" <Flynn.Mike@epa.gov>, "Schnare, David" <schnare.david@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>, "Dravis, Samantha" <dravis.samantha@epa.gov>
Cc: "Campbell, Ann" <Campbell.Ann@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>
Subject: American Iron and Steel Waiver Request

All,

I want to make you aware of a Clean Water State Revolving Fund (CWSRF) American Iron and Steel waiver request that we are preparing to approve. For background, CWSRF assistance recipients must use specific domestic iron and steel products that are produced in the United States. However, we have the authority to waive this requirement based on certain circumstances set forth in Section 608(c) of the Clean Water Act.

The Akron, Ohio project in question is part of a 2014 Combined Sewer Overflow (CSO) consent decree and consists of installing 6,000 feet of 27-foot diameter storage tunnel. No domestic steel fiber reinforcement is able to meet the project's technical specifications. The City asserted, with supporting documentation and testing results, that the domestic fiber alternative would potentially compromise the structural integrity of the precast, segmental tunnel system. To date, this is the Agency's most extensively researched AIS waiver request. EPA staff verified that the material specification for the project is performance-based, visited the precast, segmental tunnel liner manufacturing facility (CSI-Hansen in Macedonia, OH) to

independently verify the performance basis of the specifications, and conducted independent market research, in addition to conducting the required public notice comment period. We have been unable to find an AIS-compliant product that meets the project's technical specifications.

Please note that during public comment solicitation, EPA received significant comments from Helix Steel, a domestic manufacturer of steel fiber reinforcement. The attached draft waiver approval and internal memo address and respond to the Helix comments. The Governor's office in Ohio and Congressional Representatives in Ohio and Michigan were copied on Helix's comment submission.

I am recommending signature and approval of the waiver by Andrew Sawyers, Director of the Office of Wastewater Management (OWM). Please let me know if you have any concerns or would like additional information.

Thanks,

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Randall, Brenda[Randall.Brenda@epa.gov]
From: Schnare, David
Sent: Fri 3/3/2017 6:24:48 PM
Subject: Re: Parking Application

Thanks Brenda. I'm still sorting my options.

Sent from my iPhone

On Mar 3, 2017, at 1:21 PM, Randall, Brenda <Randall.Brenda@epa.gov> wrote:

Hi David,

I am just following up on your transportation needs. I am in the office on Monday at 6:00am., when you get a few minutes can you give me a call. Have a great weekend!
Thanks, Brenda

To:
From: Schnare, David
Sent: Thur 3/9/2017 3:28:11 PM
Subject: Fwd: OPA Clips 3/9/17

Personal Email/Ex. 6

Sent from my iPhone

Begin forwarded message:

From: "McGonagle, Kevin" <mcgonagle.kevin@epa.gov>
Date: March 9, 2017 at 9:49:18 AM EST
To: "So, Katherine" <so.katherine@epa.gov>, "McCabe, Catherine" <McCabe.Catherine@epa.gov>, "Reeder, John" <Reeder.John@epa.gov>, "Flynn, Mike" <Flynn.Mike@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Hull, George" <Hull.George@epa.gov>, "Slotkin, Ron" <slotkin.ron@epa.gov>, "Sowell, Sarah" <Sowell.Sarah@epa.gov>, "Hart, Daniel" <Hart.Daniel@epa.gov>, "Orquina, Jessica" <Orquina.Jessica@epa.gov>, "Actadmmccabe, Catherine17" <Actadmmccabe.Catherine17@epa.gov>, "Benton, Donald" <benton.donald@epa.gov>, "Bangerter, Layne" <bangerter.layne@epa.gov>, "Davis, Patrick" <davis.patrick@epa.gov>, "Ericksen, Doug" <ericksen.doug@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Greaves, Holly" <greaves.holly@epa.gov>, "Kreutzer, David" <kreutzer.david@epa.gov>, "Munoz, Charles" <munoz.charles@epa.gov>, "Schnare, David" <schnare.david@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>, "Sugiyama, George" <sugiyama.george@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>, "Valentine, Julia" <Valentine.Julia@epa.gov>, AO OPA Media Relations <AO_OPA_Media_Relations@epa.gov>
Subject: OPA Clips 3/9/17

Below: CNBC (2), Bloomberg BNA (2), E&E News (2), InsideClimate News, LA Times, InsideEPA (3/8), Quartz (3/8)

CNBC

<http://www.cnbc.com/2017/03/09/trumps-epa-chief-says-he-will-address-fuel-economy-standards-very-soon.html>

Trump's EPA chief says he will address fuel economy standards 'very soon'

By Jacob Pramuk 3/9/17 9:28 AM

The head of President Donald Trump's Environmental Protection Agency said Thursday he expects an announcement rolling back fuel economy rules "very soon."

Automakers have expressed concern about the rules set during the Obama administration, which would have pushed auto fuel economy standards to 54.5 miles per gallon by 2025. Some companies have said the Corporate Average Fuel Economy, or CAFE, standard would boost regulatory compliance costs.

EPA Administrator Scott Pruitt, who has pledged to roll back what he deems burdensome regulations, told CNBC that American automakers wanted to evaluate those standards. He said he believes the rulemaking process was rushed.

"There's going to be an announcement on that very soon and I think what's concerning to me, and I think concerning to the president, is how that process occurred," Pruitt said on "Squawk Box."

"I think that what has been broken in that process is, one, not a recognition of the great progress that's been made with those standards, but two, those in Detroit, those that are manufacturing autos in this country, expressed to the EPA that they wanted to evaluate the impact of the previous standards. And that was largely disregarded."

Backers of the Obama administration rules, which the EPA issued only a week before Trump took office, say automakers have overblown the potential costs of complying with them. They also argue that consumers may be willing to pay for better fuel economy, in any case.

Trump has held several meetings with key executives since taking office, some of which have included the CEOs of Ford and General Motors.

CNBC

<http://www.cnbc.com/2017/03/09/epa-chief-scott-pruitt.html>

EPA chief Scott Pruitt says carbon dioxide is not a primary contributor to global warming

By Tom DiChristopher 3/9/17 8:57 AM

Environmental Protection Agency Administrator Scott Pruitt said Thursday he does not believe carbon dioxide is a primary contributor to global warming.

"I think that measuring with precision human activity on the climate is something very challenging to do and there's tremendous disagreement about the degree of impact, so no, I

would not agree that it's a primary contributor to the global warming that we see," he told CNBC's "Squawk Box."

"But we don't know that yet ... We need to continue the debate and continue the review and the analysis," he added.

Pruitt's view is at odds with the opinion of NASA and the National Oceanic and Atmospheric Administration.

"The planet's average surface temperature has risen about 2.0 degrees Fahrenheit (1.1 degrees Celsius) since the late 19th century, a change driven largely by increased carbon dioxide and other human-made emissions into the atmosphere," NASA and NOAA said in January.

Pruitt previously served as Oklahoma attorney general, where he rose to prominence as a leader in coordinated efforts by Republican attorneys general to challenge President Barack Obama's regulatory agenda. He sued or took part in legal actions against the EPA 14 times.

Democrats and environmentalists opposed Pruitt's nomination to lead the EPA due to his close relationship with fossil fuel companies and his history of casting doubt on climate change. Conservatives and the energy industry have cheered his efforts to push back on what they view as over-regulation under Obama.

Pruitt maintained on Thursday it's possible to be pro-growth, pro-jobs and pro-environment all at once.

"This idea that if you're pro-environment you're anti-energy is just something we've got to change so that attitude is something we're working on very much," he said.

Pruitt also called the Paris Agreement, an international accord aimed at mitigating the impacts of climate change, "a bad deal."

"I happen to think the Paris accord, the Paris treaty, or the Paris Agreement, if you will, should have been treated as a treaty, should have gone through senate confirmation. That's a concern," he said.

The Paris Agreement was negotiated by the State Department, and future adherence to U.S. commitments made under Obama will be guided by current Secretary of State Rex Tillerson.

Bloomberg BNA

http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=106790562&vname=dennotallissues&wsn=499970

Trump's Water Promises Face Challenges in 115th Congress

By Sarah Babbage and Adam Schank 3/9/17

President Donald Trump promised a major new investment in infrastructure, including water projects, during his campaign.

His budget proposal, however, is said to propose a 25 percent cut to the budget of the Environmental Protection Agency, which administers many water programs. Financing for water projects could also be imperiled by a tax code overhaul, though it could also benefit from the new administration's drive to cut regulations.

Revolving Loan Funding vs. EPA Cuts

One of Trump's campaign promises was to triple funding for the state revolving loan programs that help state and local governments upgrade their drinking and waste water infrastructure.

The funds had an annual allotment of \$2.2 billion in fiscal 2016, requiring another \$4.4 billion to meet the president's goal. If Congress provided funding in line with Trump's proposal, tripled revolving funds would leave little space for any other EPA programs.

The EPA is currently operating under an annualized budget of \$8.3 billion, including \$120 million in supplemental funding for lead contamination in the Flint, Michigan, water supply. The funds were provided under the continuing resolution that expires on April 28, and further action will be needed to keep the agency operating after that date.

While EPA's budget has been relatively flat in recent years, the current level is still less than the \$8.7 billion provided in fiscal 2011.

Whither the Municipal Bond Tax Break?

Water authorities and other municipal governments are pre-emptively defending the tax exemption for municipal bond interest, which politicians from both sides of the aisle have previously eyed as an offset for tax cuts.

The tax preference, which Treasury predicts will cost \$565 billion over the next decade, allows state and local governments to issue bonds at lower interest rates that are attractive to investors because the interest is tax-free. The House Republican tax reform blueprint proposed closing most credits and deductions to offset cuts to personal and corporate tax rates.

At least 70 percent of water utilities use municipal bonds to finance their capital investments. Municipal governments issued \$34 billion in bonds to fund water projects in 2014.

Trump has said he supports the exemption. If Republicans' other major tax pay-for -- the controversial border adjustment tax -- can't get through Congress, it's more likely to be capped or eliminated to generate revenue to offset tax cuts.

\$1 Trillion for Infrastructure

Trump's water infrastructure push was part of his campaign promise to spend as much as \$1 trillion on infrastructure, which he called on Congress last week to fund through a combination of public and private dollars.

Although his speech barely mentioned water, EPA Administrator Scott Pruitt wants it included in the investment. "One of the things I've tried, in communicating to the White House, is that when we talk about infrastructure spending outside of the budget this year, water infrastructure needs to be part of that," Pruitt said in an interview with Bloomberg BNA.

A \$1 trillion investment is substantially more than any recent proposal. Hillary Clinton proposed a \$275 billion investment, while the 2009 stimulus law appropriated \$150 billion for infrastructure.

Financing Options

Trump's campaign proposed a one-time 10 percent tax on the \$2.6 trillion in profits that corporations have been holding overseas to avoid the U.S.'s 35 percent top tax rate, and using some of the revenue for infrastructure. The House GOP tax blueprint also proposed a deemed repatriation tax, but would use the proceeds to pay for personal and corporate tax cuts.

Congressional Democrats, however, have shown an interest in funding infrastructure through repatriation, so it could be used as a bipartisan bargaining chip.

The Trump campaign also released a white paper that proposed raising \$167 billion from private investors that would leverage debt financing for a total investment of \$1 trillion. Investors would receive an 82 percent tax credit for their investment, and the government would pay for it through the increased tax revenue from contractor profits and worker wages, the paper said.

Democrats have characterized the plan as a tax giveaway and have said it's a non-starter.

Finally, Trump criticized Clinton for proposing an infrastructure bank during her 2016 campaign, but Treasury Secretary Steven Mnuchin has since said it's worth considering. Infrastructure banks pair federal seed money with private dollars to fund projects that are generally large or of regional significance.

In addition to possible skepticism from Trump, an infrastructure bank could face opposition from other Republicans. Pennsylvania Republican Bill Shuster, chairman of the House

Transportation and Infrastructure Committee, called the idea “a boondoggle” in a Feb. 7 interview with Bloomberg News.

Regulatory Rollbacks

Republicans in Congress are attempting to advance a package to repeal and replace the Affordable Care Act, and have said they'll tackle the tax code next. That leaves little room on the spring calendar, which adds to the challenges of funding and assembling a major infrastructure package.

Water entities could, however, benefit from Trump's promise to roll back regulations and speed up review processes.

An executive order signed Jan. 24 would allow governors or the head of a federal agency to designate an infrastructure project as high priority. If the administration agreed, the project would qualify for expedited procedures to get through its environmental reviews.

House Natural Resources Committee Chairman Rob Bishop, a Utah Republican, has also said he wants to take a close look at federal environmental laws to speed up the permitting and review process under the National Environmental Policy Act.

Making those changes legislatively will be difficult as any bill will need to obtain 60 votes in the Senate to overcome a likely filibuster from Democrats.

Bloomberg BNA

http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=106790572&vname=dennotallissues&wsn=499965

Great Lakes Representatives Demand Threatened Cleanup Money

By Sylvia Carignan 3/9/17

A proposal to chop over 90 percent of federal funding for Great Lakes cleanup would “reverse years of progress,” three representatives told a House subcommittee March 7.

The proposal came from the Office of Management and Budget earlier this month. The cut would bring the Environmental Protection Agency's budget for the Great Lakes Restoration Initiative from \$300 million a year to \$10 million annually.

The proposal is subject to agency and congressional approval, but Reps. Sandy Levin (D-Mich.), David Joyce (R-Ohio) and Louise Slaughter (D-N.Y.) made clear they will fight it. The multi-agency restoration initiative started in 2010 to focus on cleaning up contaminated areas of the Great Lakes, reduce nutrient runoff, restore native species' habitats and control invasive species.

Great Lakes cleanup resources “have supplemented agency budgets to fund coordinated efforts to protect and restore the Great Lakes ecosystem, and we must ensure that this important work continues,” they wrote to the House appropriations committee's Interior and Environment subcommittee. “Halting this commitment would reverse years of progress, dramatically reduce the [Great Lakes Restoration Initiative's] impact, and jeopardize the environmental and economic health of the region.”

Deep Cuts

Levin, Joyce and Slaughter are leading the effort to get their colleagues’ support on the letter this month. More than 50 members of Congress signed a similar letter asking for continued Great Lakes funding in 2016.

Matt Doss, policy director at the Great Lakes Commission in Ann Arbor, Mich., said the \$10 million allocation would not only hobble cleanup efforts, but wouldn't be enough funding to support the EPA's Great Lakes program office.

Bill Becker, executive director of the National Association of Clean Air Agencies, spread word about the proposed cuts in an email he sent to his members March 1.

According to Becker, the OMB's proposal for the EPA slashed staff and grants to states as well as the Great Lakes Restoration Initiative. A group representing U.S. and Canadian mayors in the Great Lakes also has warned the proposed cuts to the initiative would be devastating.

E&E News

<http://www.eenews.net/climatewire/2017/03/09/stories/1060051168>

Pruitt’s first moves worry enviros, open records advocates

By Niina Heikkinen 3/9/17

Ethical and legal questions that dogged Scott Pruitt's nomination process are continuing to shadow his first weeks as U.S. EPA administrator.

From concerns about transparency with his use of private email for official business as Oklahoma attorney general to questions about conflict of interest stemming from his new role at an agency he sued more than a dozen times, environmental and advocacy groups are keeping a close eye on the actions of the new administrator.

Environmental groups called foul late last week when Pruitt canceled an information collection request (ICR) on methane emissions from oil and gas facilities.

The Obama administration had started gathering information from the industry in

preparation for writing regulations to control methane emissions and other greenhouse gases from existing sources. EPA finalized regulations on methane for new and modified sources, the New Source Performance Standards, last year. Pruitt halted the ICR a day after receiving a letter from nine attorneys general and two governors. They contended that collecting the data was too expensive and burdensome to the fossil fuel industry.

"There is extremely well-documented and well-founded reasons to collect this information, and at a stroke of a pen to reverse that at the industry's bidding, it surely looks like EPA is at the beck and call of industry, and there is no justification that we can see for that request to be withdrawn," said Vera Pardee, senior counsel at the Center for Biological Diversity.

She noted that once EPA regulates new sources, the agency has an obligation to "create guidance" for existing sources, too.

The move sent a "strong signal" that the administrator would not move forward with controlling methane emissions, said David Doniger, senior attorney at the Natural Resources Defense Council's climate and clean air program.

That might mean legal trouble ahead for Pruitt if he indeed does not go forward with regulating methane under the Clean Air Act and the new source regulation stays on the books. Environmental groups did not comment on whether they would pursue legal action against the agency. However, yesterday NRDC filed a Freedom of Information Act request with EPA to determine whom Pruitt was communicating with about the ICR prior to making the decision to cancel it.

"It has the hallmark of decision that is legally vulnerable," said Sean Donahue, legal counsel for the Environmental Defense Fund.

Donahue noted that the letter was signed by attorneys general who are close to Pruitt, as well as the new Oklahoma attorney general, Mike Hunter, who had served as Pruitt's first assistant attorney general.

"[Pruitt] holds himself out as protecting states, but he uses regard for federalism as a euphemism for a regard for industry interest," Donahue said. "But in this issue, there are states on both sides, and there are states that believe that [methane] is threatening imminent harm. It doesn't seem like he understands that he is in a new job and he represents everyone."

Pruitt supporters hail end to 'onerous' regs

EPA did not return a request to comment on whether the agency would be moving forward with methane regulations at a later date. Last year, as Oklahoma attorney general, Pruitt joined in a lawsuit brought by West Virginia against EPA, challenging the rule regulating methane for new sources.

Representatives of the fossil fuel industry maintain that the information collection process

was poorly timed and badly handled by the Obama administration and was being challenged well before Pruitt was confirmed as EPA administrator.

"I think the environmental groups are just very upset because they were counting on a different administration that would move forward with very onerous existing source rules," said Kathleen Sgamma, president of the Western Energy Alliance.

"The bottom line was this ICR was rushed at the last minute, it was not well thought-out and was asking for data that would have overwhelmed the agency. It was sending out a huge net to trawl in all kinds of data that would not be useful for regulating methane," she said.

The challenge to the ICR was not in opposition to providing data about methane emissions, at least according to the Independent Petroleum Association of America. Instead, it had objected in part because the agency did not follow advice to seek out data that were already publicly available through state agencies and the private website Drillinginfo, said Lee Fuller, executive vice president of IPAA.

Fuller said IPAA had provided public comment to EPA under the Obama administration, and then had requested a halt to the ICR once Donald Trump was elected president, especially since there is ongoing litigation challenging the new source regulations.

"We started talking to the transition team with the Trump administration, so the new administration could make a decision about whether it would want to pursue the same pathway as the Obama administration. We continued to urge them to reconsider the approach and well before there was any administrator," said Fuller.

He called the decision to terminate the ICR the "right course of action."

Transparency an ongoing concern

As environmental groups seek to dig into Pruitt's communications with industry and his former attorney general colleagues, they may run into another problem: access to his email.

Advocacy groups say there could be cause for concern about transparency at a Pruitt-led EPA, after a recent court case against the former Oklahoma attorney general revealed he had used private email, at least on occasion, to conduct official business.

"The problem is, we don't know how extensive his use of personal email was, we had very few examples of him using his Oklahoma [attorney general] account, there is a lingering question over how prevalent it was," said Nick Surgey, research director at the Center for Media and Democracy.

"We're asking the court to ensure that Scott Pruitt's [personal] email account was searched for and any emails that should have been included in the request to us," Surgey said.

Pruitt's use of private email was not in accordance with the "spirit of the law," said Alex Howard, deputy director of the Sunlight Foundation, an open-government advocacy organization.

"Certainly if an official does have a pattern of using private messaging, then people will naturally put those people under more scrutiny for using that approach," Howard said.

If Pruitt did use a private email as EPA administrator, the public would have a hard time getting access to the records unless the private account is leaked or made public in some way.

Barrasso 'pleased' Pruitt will now stick to EPA email

While it's possible to submit a FOIA request for the administrator's personal email, there has to be some sort of record or trail showing its existence, said Aaron Scherb, director of legislative affairs at Common Cause, a lobbying organization.

"You can't just say any private email address that John Doe could use," said Scherb.

The EPA administrator joins Vice President Mike Pence and former Secretary of State Hillary Clinton as the latest politician to be publicly outed for using personal email for official business.

While they may be the most prominent recent examples, the use of personal email, personal devices and private messaging apps is common practice in all levels of government and among all parties, according to Howard.

"Sometimes it's a matter of convenience, sometimes it's intentional," Howard said. "This is the digital equivalent of stepping out into the hallway to have a conversation that's not on the record."

Now that Pruitt is working at a federal level, he will be subject to more public laws and record requirements than he was as a state attorney general. But short of putting politicians under 24-hour surveillance, there is no way to prevent these kinds of communications from happening, Howard said.

"We have to trust them that they are going to do their best to follow the law," he said.

A spokesman for Sen. John Barrasso (R-Wyo.), head of the Senate Environmental and Public Works Committee, said in an email that the senator had asked Pruitt about whether he would use personal email to conduct EPA business during his confirmation hearing.

"The chairman asked Pruitt if he would commit to only using his EPA email account for official EPA business. The chairman was pleased that Pruitt agreed," the spokesman said.

E&E News

The Clean Power Plan is gone – and there's no 'replace'

By Evan Lehmann 3/9/17

The White House intends to unravel the Clean Power Plan without providing a replacement, according to a source briefed on the issue.

An executive order expected to be released next week also instructs the Justice Department to effectively withdraw its legal defense of the climate rule in the U.S. Court of Appeals for the District of Columbia Circuit. The move aligns the White House with about two dozen Republican state attorneys general who are challenging the way the rule restricts greenhouse gas emissions at power plants.

The result, if successful, would mean the case is "frozen in place," the source said, preventing the D.C. Circuit, which has six judges appointed by Democrats and four by Republicans, from issuing an opinion this spring. Other legal experts say the case could continue if states or other groups go on defending the rule.

"Justice goes to the court and says ... 'Don't waste your time trying to put together an opinion when the legal basis for the case that you're reviewing could potentially go away,'" the source said. "Normally, a court will grant that. There's no guarantee."

It was unclear until now if the Trump administration would "repeal and replace" the Clean Power Plan, or just set upon a path to undo it. Some had anticipated that the Trump administration might pursue an alternative and much less stringent rule, but the executive order will only call for the withdrawal of the regulation.

That raises questions about whether EPA would fail to satisfy legal requirements to regulate carbon dioxide and other climate pollutants.

The agency in 2009, responding to the Supreme Court, determined that greenhouse gases endanger human health. That requires EPA to regulate emissions, and the agency did that by promulgating the Clean Power Plan.

"I think, as a matter of law, that carbon is a pollutant has been settled," said Christine Todd Whitman, who served as EPA administrator under President George W. Bush. "EPA has to act once you have that kind of a finding."

Waiting for the 'right time'?

The new details are surfacing as the White House confirmed yesterday that the executive order's release would be delayed. It was scheduled to be signed by President Trump this week. Now that will likely occur next week.

The delay follows successful efforts by Ivanka Trump, the president's daughter, and her husband, Jared Kushner, to remove language from the order that was critical of the Paris Agreement on climate change.

The current order does not refer to the global pact, and the source said that issue did not hold up the order's release. The delay was caused by the rise of other priorities, including the release of the Republican health care proposal Monday, the source said.

Trump also caused unforeseen turbulence Saturday by accusing former President Obama of wiretapping Trump Tower.

Coal companies and mining groups, which Trump described as being victimized by the climate rule on the campaign trail, have waited patiently through the delays. But now that he's 49 days into his presidency, there are subtle signs that industry wishes he would act more swiftly.

Jeff Holmstead, a former assistant EPA administrator under Bush who represents opponents to the rule, said it's likely the White House is waiting for the right time to unveil the rule with maximum effect.

"I hope it's soon," he added. "I think everybody, certainly all of my clients, think the Clean Power Plan is dead. But there's always uncertainties."

Fresh lawsuits await

For some Democrats, the order represents a tightrope walk. It's bound to be challenged in court by liberal state attorneys general and environmental groups for not providing an alternative to the Clean Power Plan. But if it did provide one, Republicans in coal states would likely feel that Trump had abandoned his campaign promise to terminate the regulation.

"It's not like [Senate Majority Leader] Mitch McConnell [R-Ky.] will say, 'OK, they're gonna do a new rulemaking on power plants, so I'm sure it'll be better,'" said Heather Zichal, Obama's former climate adviser. "They fundamentally don't think coal plants should be held accountable for their carbon pollution. So how do you deal with that piece? I think politically that's hard for them."

Environmental groups are already promising to sue EPA for failing to comply with its own endangerment finding.

"If EPA withdraws [the rule] and does not replace it with strong standards, we will challenge the agency's action in court," said Joanne Spalding, the chief climate counsel at the Sierra Club.

The administration anticipates that. The executive order instructs EPA to "revise or rescind"

the Clean Power Plan, wording that's meant to comply with the Administrative Procedure Act by letting EPA, not the White House, determine the fate of the rule.

The agency will then go through the long rulemaking process. But rather than promulgating a new rule, it will terminate an existing one. It will post notice and take comments and then put out a proposed rule. After accepting more comment, the action will be finalized. Then the administration is "off to the races in court," the source said.

The Clean Power Plan is just one part of the executive order, which is geared around "energy independence."

It does not address the endangerment finding, which is the underpinning of current and future EPA regulations on greenhouse gases. No decision has been made by White House officials about whether to attack the finding in subsequent actions, the source said.

"That is a huge issue," the source said. "That's just going to require a lot of thinking."

InsideClimate News

<https://insideclimatenews.org/news/09032017/epa-environmental-justice-mustafa-ali-flint-water-crisis-dakota-access-pipeline-trump-scott-pruitt>

Chief Environmental Justice Official at EPA Resigns, With Plea to Pruitt to Protect Vulnerable Communities

By Phil Mckenna 3/9/17

The head of the environmental justice program at the Environmental Protection Agency has stepped down, departing the government with a lengthy letter to Scott Pruitt, the EPA's new administrator, urging him not to kill the agency's programs.

Mustafa Ali, a senior adviser and assistant associate administrator at the agency, worked to alleviate the impact of air, water and industrial pollution on poverty-stricken towns and neighborhoods during nearly a quarter century with the EPA. He helped found the environmental justice office, then the environmental equity office, in 1992, during the presidency of President George H.W. Bush.

Ali leaves the EPA as Pruitt, who took office Feb. 17, prepares to implement deep cuts in the agency's budget and staff. A Trump administration proposal would cut the EPA's \$8 billion budget by \$2 billion and reduce its roster of 15,000 employees by 20 percent. An internal memo obtained by multiple news outlets on March 1 called for a complete dismantling of the office of environmental justice and elimination of a number of grant programs that address low-income and minority communities. A story in the Oregonian reported that funding for the office would decrease 78 percent, from \$6.7 million to \$1.5 million.

Justice issues have become an environmental focal point in recent years—most recently in the battle to clean up lead-contaminated water in Flint, Mich., a largely African-American community, and in the fight to stop the nearly completed Dakota Access pipeline just upstream of the Standing Rock Reservation in North Dakota.

"I think it's going to be one of the major civil rights issues of the 21st century," said Benjamin Wilson, head of the National Environmental Justice Conference and chairman of the law firm Beveridge & Diamond. "It's going to become increasingly not simply local but regional, national and international in scope."

Ali said he has received no indication that the adviser position or his job as assistant associate administrator in the agency's Office of Enforcement and Compliance Assurance will be filled by the Trump administration. EPA officials declined to comment on the positions.

The EPA made strides during the Obama administration to address environmental justice concerns, including incorporating equity into regulatory decision-making, and adopting a long-term strategy in its EJ 2020 Action Agenda. The agency was, however, heavily criticized for not doing enough to address environmental concerns of low-income and minority populations.

Ali said in an interview that he considers the shielding of poor and minority neighborhoods from the effects of pollution a crucial function of the EPA, but that the agency's new leaders have not given "any indication that they are focused or interested in helping those vulnerable communities. My values and priorities seem to be different than our current leadership and because of that I feel that it's best if I take my talents elsewhere."

Still, in his resignation letter, which was devoid of rancor, Ali urged former Oklahoma Attorney General Pruitt, a longtime opponent of EPA regulation, to reconsider proposed cuts to environmental justice programs. "When I hear we are considering making cuts to grant programs like the EJ small grants or Collaborative Problem Solving programs, which have assisted over 1,400 communities, I wonder if our new leadership has had the opportunity to converse with those who need our help the most," Ali wrote. "I strongly encourage you and your team to continue promoting agency efforts to validate these communities' concerns, and value their lives."

Meanwhile, the power that Ali once wielded inside the EPA has been dissipated. His position as senior adviser to the EPA administrator was eliminated in January when Obama's EPA chief Gina McCarthy left, he said.

"I am heartbroken that Mustafa feels that his time of productivity in the agency has passed," McCarthy said in an interview. "He managed the interagency working group on environmental justice," she said, referring to a conclave of federal agencies that met to discuss common concerns. "So when I say we brought actions and strategies to the table, it wasn't just EPA, it was throughout the federal government."

Part of the environmental justice program's strategy was to help leverage its relatively small grants into large programs. The town of Spartanburg, South Carolina, for example, received a \$20,000 environmental justice grant to help clean up contaminated industrial sites in the town. Spartanburg ultimately raised more than \$270 million from public and

private sources and used the recovered land to build housing, a job training facility and health centers.

"You're talking about a community that was devastated and that raised itself up because you had great community members and they had somebody who listened to them at the federal government," McCarthy said. "Mustafa was one of those people. I went to that community. I sat with the mayor. He gave me a key to the city. We were sitting in a community center that had been developed as a result of this small start, where somebody paid attention to that community and it happened to be EPA."

Cynthia Giles, assistant administrator for the Office of Enforcement and Compliance Assurance in the Obama administration, cites the town of Tonawanda, New York, to which the EPA gave a small grant to conduct ambient air monitoring. The grant "ultimately led to a criminal case that EPA brought against Tonawanda Coke Corporation for high levels of benzene emissions," Giles said.

Giles said there is no economic justification for killing the justice program. "The money that is involved is not noticeable in the overall scheme of budgets," she said. "The only reason to eliminate it would be to send a message—that they don't care about the needs of the most vulnerable communities."

"We've had both [Republican and Democratic administrations] over time and none of them tried to do anything to destroy what the previous administration had done," Ali said. "Folks are just hoping that this one will wake up and see value in continuing this important work."

Yet Ali sees nothing in Pruitt's background to support that hope. He repeatedly sued the EPA for its efforts to regulate CO2 emissions, mercury and other forms of pollution. "When the administrator was in Oklahoma I do not know of any time that he made environmental justice a priority," Ali said.

Pruitt tweeted last month he was dedicated to working with "stakeholders—industry, farmers, ranchers, business owners—on traditional values of environmental stewardship."

Some of the responses the tweet garnered included: "What about environmental advocates?" "What about...people w/o access to safe water & air? Our children?" And "what about ordinary citizens."

In a February statement, advocacy group We Act for Environmental Justice said of Pruitt: "His record indicates he lacks awareness or concern for communities impacted by asthma and other environmental health-related issues."

Ali, who grew up near a coal-fired power plant in West Virginia, interned in the office of William Reilly, the agency's third administrator, before joining as a staff member in the newly formed office of environmental equity in Nov. 1992. From 2007-2008, Ali worked on Capitol Hill in the office of Congressman John Conyers before returning to the EPA. He proudly boasts that he has worked on environmental justice issues in more than 500 communities.

"His work and the work of the EPA has helped empower people, and whenever we can have a clear articulation of the issues, it's amazing the common ground that can be

reached by people on opposing sides," Wilson said. "But if we never have that discussion, that frustration festers and that is never good."

Ali will join Hip Hop Caucus as a senior vice president. The group is a non-profit that aims to promote political activism for young U.S. voters through hip-hop music and culture. He is scheduled to speak Thursday at an environmental justice conference in Flint, in his first public appearance with the organization.

"What I'm hoping to do is highlight that environmental justice needs to continue to happen," Ali said, "that there are opportunities to make it happen, and that if we don't do it there will be huge public health impacts."

LA Times

<http://www.latimes.com/politics/la-na-pol-regulatory-reform-science-20170309-story.html>

What's at stake as the GOP moves to slash regulations? For starters, clean air

By Evan Halper 3/9/17 3:00 AM

Amid the Republican backlash against federal scientists who write rules governing everything from movie theater popcorn to offshore oil drilling, stories abound of overburdened businesses, heavy-handed civil servants and crushing paperwork.

But another story, one involving a deadly household material, offers a lesson in what can go wrong when government experts are shackled, as currently envisioned under a sweeping regulatory reform bill gliding toward President Trump's desk.

The GOP-backed legislation revives many of the rule-making hurdles that for years crippled the government's ability to respond to the asbestos-exposure epidemic, which has been blamed for tens of thousands of American deaths.

"I don't think lawmakers are focusing on how extreme this legislation is," said Paul Billings, lobbyist for the American Lung Assn., which has joined several major public health groups imploring congressional leaders to apply the brakes. "It has been viewed as this abstraction that creates improvements in the regulatory process. This would undermine bedrock public health laws."

The linchpin of the 87-page proposal is a directive to regulators that may be impossible to meet. They would have to prove they have taken the least costly option possible to business before imposing any major new rule. A similar mandate became stifling when applied for decades to the regulation of chemicals such as asbestos because it allowed companies to keep rules at bay by continually arguing for cheaper approaches.

The Environmental Protection Agency gave up trying to ban the substance in 1991, after a

federal appeals court ruled it had not proved its regulation was the least financially burdensome approach. The decision became a rallying point for overhauling the Toxic Substances Control Act, which guides EPA authority over such chemicals. The act finally was revised last year, and in November, the EPA announced asbestos was among the first chemicals it was targeting with its new authority to require safety reviews.

By then, however, there was not much left for the EPA to do on asbestos, after legions of cancer victims took matters into their own hands with civil actions that bankrupted the industry. But the years of government inaction took their toll. A quarter-century later, nearly 15,000 Americans still die annually of diseases caused by asbestos exposure during their lifetime, according to the Asbestos Disease Awareness Organization.

The new GOP regulatory reform bill, which swiftly passed the House in January without committee debate, would apply the same test that hobbled regulators on asbestos to every major rule the government wants to impose. That includes setting Clean Air Act limits for how much toxic pollution can be released into the air in dense, asthma-infested urban areas like Los Angeles. Car safety, food safety, worker safety and consumer product safety rule-making also would be affected.

The far-reaching plan has been overshadowed by more immediate headlines springing from the White House, where wiretapping conspiracies, travel bans and Obamacare repeal anxieties are consuming the oxygen. Even the regulatory reform blueprint's name — the Regulatory Accountability Review Act — is sleep-inducing, masking the gravity of a proposal the U.S. Chamber of Commerce has placed among its top political priorities at a time when its influence in Washington has surged.

The chamber has invested tens of millions of dollars in lobbying for and promoting the bill, HR 5. It alerted lawmakers just before the measure passed the House in January that it "is a long-standing priority for the chamber" that is "long overdue." Lawmakers were cautioned in the letter against supporting any amendments that would moderate the proposed law, warning that such action could reflect unfavorably on the politically potent voting scorecard that the organization publishes to rank lawmakers.

While there are several dramatic proposals before Congress to rein in federal rule-makers, lobbyists are advising clients that the bill is one that actually stands a good chance of advancing to a president who is urgently looking to deliver a blow to the bureaucracy. A few moderate Democrats in the Senate already have expressed interest in helping the GOP leadership secure the 60 votes it needs for passage.

Supporters offer a cache of statistics that frame the bill as a common sense plan to give corporations some influence over a regulatory process they say is suffocating them. They point to a spike over the past 15 years in complex federal rules costing businesses more than a billion dollars, and showcase estimates concluding the rules have become such a drag on the economy that they are costing the average American family \$15,000 per year.

"There is a legitimate question of whether you really need this continued churning and

accumulation of all these regulations,” said Susan Dudley, who worked on regulatory reform at the George W. Bush White House and is now director of Regulatory Studies Center at George Washington University.

But others warn the legislation threatens to go considerably further than slowing the churn of rule-making. It directs agencies that for decades have used science alone in crafting major public health and worker safety protections to change course and find the most cost-effective approach for business.

“It’s not hard to look down the line and see the problems this would create,” said Thomas McGarity, professor of administrative law at the University of Texas. He cited several major public safety challenges with which regulators are wrestling and the potentially tragic consequences of cutting corners on oversight, from undrinkable water in cities like Flint, Mich., to blueprints for self-driving 18-wheelers.

Beyond requiring a cost analysis, the legislation also would put dozens of new obstacles on federal agencies before they can finalize a new rule — a process that already takes years. Companies that don’t like the approach would be empowered with a bounty of new opportunities to file legal challenges and demand reviews.

Yogin Kothari, a lobbyist at the Environmental Working Group, sees irony in it all: “Their solution to too much bureaucracy and red tape is adding more red tape.”

Clean Air Act enforcement, which is based on a painstaking analysis of such factors as how many lives would be saved and cases of asthma averted, could be altered drastically. The toll those rules take on corporate profits would gain new currency. Public health officials warn that enforcement of tobacco laws also would be inhibited.

The Consumers Union advised lawmakers that other landmark protections, including the Consumer Product Safety Act and the Securities Exchange Act, would be weakened substantially. “This dangerous proposal would do severe damage to protections consumers depend on,” the group wrote to lawmakers.

Yet the bill’s champions in Congress are undeterred. Among them are Rep. Doug Collins (R-Georgia), who took to the House floor the same day Consumers Union sent its plea.

“It is time we demand the voice of the American people be heard,” Collins said just before casting his vote in favor of the bill, “rather than letting the others up here, separated in cubicles, decide what is best.”

Inside EPA

<https://insideepa.com/daily-news/ecos-mounts-defense-epas-state-funding-assistance-fy18-cuts>

ECOS Mounts Defense OF EPA’s State Funding Assistance from FY18 Cuts

By David LaRoss and Doug Obey 3/8/17

The Environmental Council of the States (ECOS) is mounting a strong defense of EPA grants and other programs that support state activities from the Trump administration's suggested massive cuts to agency funding in fiscal year 2018, warning the cuts could threaten states' ability to meet a wide range of environmental protection goals.

In an exclusive March 8 interview with *Inside EPA*, ECOS President John Linc Stine -- who also serves as commissioner of the Minnesota Pollution Control Agency -- said the council, which represents many state environment regulators, is planning meetings with White House officials and members of Congress in the coming weeks to urge them to defend areas of EPA's budget that provide direct funding support to states.

A reduction in EPA's FY18 budget “has the potential of cutting across the entirety of our activities, but it’s unclear until we see the entirety of their budget document what areas they’re proposing to reduce,” Stine said, with the Trump administration said to consider up to a 25 percent cut to EPA's existing \$8.1 billion funding, including possibly reducing EPA's 10 regional offices to eight.

He told *Inside EPA* that ECOS is scheduling meetings with White House Office of Management & Budget (OMB) officials and legislators “to advise them of our concerns.”

But the states are also acknowledging that any cuts to EPA will almost certainly impact them in some way, because “it’s all a priority for state agencies like ours,” he said.

In a separate March 7 interview, ECOS Executive Director and General Counsel Alex Dunn said cuts could be especially harmful when they affect programs where states have accepted delegated authority from EPA with a promise of federal funding -- and could discourage states from seeking such delegation.

For instance, she said budget cuts might complicate efforts by states like Massachusetts,

which is currently weighing accepting delegated authority over the Clean Water Act discharge permit program.

“The natural question from Massachusetts legislature will be, we are going to take on performing a service or an activity previously done by EPA Region 1. How much will EPA be giving us to assist? . . . When you look at a new delegation it becomes clear that new federal funding should be a part of” the process, she said.

ECOS' Concerns

ECOS has previously raised concerns that the White House's plan to cut EPA's budget significantly may renege on commitments by agency Administrator Scott Pruitt to preserve state grants as he works to return much of the responsibility for implementing environmental programs to states.

In a March 1 letter to Pruitt and OMB Director Mick Mulvaney, ECOS questioned the proposed cuts in light of Feb. 25 remarks by Pruitt at the Conservative Political Action Conference where he called states and EPA "partners, not adversaries," and said, "help is on the way."

While the Trump administration has yet to release its formal budget request for FY18, OMB's initial “pass back” includes a 25 percent cut to EPA's current \$8.14 billion overall budget and a 30 percent cut to many grant programs.

OMB's threatened cuts for EPA have raised concerns among a wide array of stakeholders, including industry and states, that EPA could be left without the funds needed to perform mandatory duties such as providing resources to state environment departments that lack the ability to operate solely on state funds.

“When I look at our budget in Minnesota for example, we receive \$25 million a year in EPA grant funds not including the Great Lakes Restoration Initiative project dollars,” Stine told *Inside EPA*.

He said EPA money “across our grants” supports monitoring for “air, land and water contamination,” state regulators' permitting and enforcement work, and contaminated site cleanups including but not limited to the Superfund and brownfields programs.

In the separate interview, Dunn said, “States have made it pretty clear that core funding for the air, water, land programs needs to remain whole.”

Regional Offices

Beyond threats to federal funds, Stine added that a plan to possibly close EPA regional offices is concerning to state officials, both because states receive technical and regulatory assistance from regional officials and because some high-profile program efforts like the Great Lakes Restoration Initiative (GLRI) are operated by the regions.

The effect of shuttering regional offices “really does depend on the transactional requirements for each regional office, but it would be a concern because if you’re going to have a change . . . there’s always a transitional period where things get less efficient and less clear for people, so there’s time that gets consumed in trying to sort that all out,” he said.

As part of the budget planning process, OMB is requiring EPA to craft a plan for consolidating the current 10 regional offices down to eight in order to realize “efficiencies” -- though it is unclear how likely it is that such a plan will make it into the budget request.

“I know that there are some of the regions that are having a conversation with the states, I think the Western states,” but there are no indications of whether the consolidation will happen, Stine said. He noted that along with GLRI, restoration efforts for the Chesapeake Bay, Puget Sound and San Francisco Bay are all administered through EPA regional offices.

However, he did not dismiss the idea that consolidating regions could ultimately make EPA

more efficient. Beyond the initial “transitional period,” it is “too soon to tell whether it has a positive, negative or neutral impact at this point,” Stine said.

EPA Budget

ECOS discussed budget priorities with OMB staff during a “recent” phone call, Stine and Dunn told *Inside EPA*. There, the White House expressed interest in state input on EPA's budget, signaling that the administration will at least consider states' requests to shore up the agency's funding despite the GOP's long-standing push to dramatically cut its activities.

“It was pretty much a listening and gathering from their perspective. . . . They did ask us to be prepared to carefully review the budget and offer more comments,” Stine said.

Dunn added that OMB appeared to be under pressure to broadly cut federal spending. “It is very clear . . . There is a very strong directive for all agencies to look very closely at the budget,” she said.

Even though Pruitt has vowed to fight to preserve funds for his priorities -- such as water infrastructure assistance, site cleanups and attainment of existing water and air standards -- Stine said it is unclear what steps the agency's leadership is taking or could take to shore up the FY18 budget.

“We’re aware that the agency is in dialogue with OMB about this . . . we’ve not received anything directly from Mr. Pruitt, but we’ve heard in communications with senior staff that they are looking closely at the budget for state programs,” he said.

Dunn said pressure from the White House to cut spending seems to put Pruitt in a tough position, because maintaining state assistance will almost certainly mean deeper cuts to EPA's own programs if EPA's overall budget is in fact reduced.

“The challenge is defending the state programs when the inevitable next question is, what about the staff and the agency that he has to run as well?” she said, adding that if EPA avoids reducing state assistance then it will almost certainly have to cut resources and staff from program offices, prompting “some very difficult decisions.”

ECOS' March 1 letter to Pruitt and Mulvaney called for an increase to state and tribal assistance grants (STAG), including the categorical grants that support states' and tribes' implementation of federal environmental mandates.

"Cuts to STAG categorical grants, or to EPA programs operated by states, will have profound impacts on states' ability to implement the core environmental programs as expected by our citizens," the letter said. -- *David LaRoss* (dlaross@iwpnews.com) & *Doug Obey* (dobey@iwpnews.com)

Quartz

<https://qz.com/928236/the-word-science-has-disappeared-from-the-mission-statement-of-the-epas-office-of-science-and-technology/>

Who needs “science” in an EPA Office of Science and Technology mission statement anyway?

By Zoe Schlanger 3/8/17

The branch of the US Environmental Protection Agency in charge of creating science-based clean water standards no longer has the word “science” in its mission statement.

Earlier this year, the stated mission of the Office of Science and Technology at the EPA’s Water Office was “developing sound, science-based standards,” and “scientific and technological foundations to achieve clean water,” according to a copy of the EPA’s website archived in January on the Internet Archive’s Wayback Machine.

The text of the mission statement has changed; the office’s mandate is now to create “economically and technologically achievable performance standards.” The word “science-based” and “scientific” no longer appear.

A coalition of researchers called the Environmental Data and Governance Initiative, or EDGI, found the changes. They are monitoring about 25,000 government web pages for any modifications under the new administration, by comparing them to copies archived on the Internet Archive by “data rescuing” events staged by archivists and programmers at universities across the country. (EDGI also plans to track any data sets that are removed.)

EDGI researcher Gretchen Gehrke told the New Republic she worries the switch is not just a linguistic detail—that it may signal a change in policy.

Instead of a science-based approach to clean water requirements—where water must meet quality standards based on peer-reviewed toxicology science, and companies can choose how to meet those standards—calling for “economically and technologically achievable” standards puts greater emphasis on the economic impact of regulation, and may mean companies would install certain technologies determined by the EPA rather than comply with a specific water-quality standard.

The EDGI researchers have found a number of other notable website tweaks: Climate change reports have disappeared off of State Department websites, while a description of a federal fracking rule, and another about a methane emissions rule, have also gone missing from Interior Department web pages.

Kevin McGonagle

Office of Media Relations Intern

U.S. Environmental Protection Agency

Telephone: (202)-564-4524

mcgonagle.kevin@epa.gov

Katherine So

Office of Media Relations Intern

U.S. Environmental Protection Agency

Telephone: (202)-564-4511

so.katherine@epa.gov

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 8:43:27 PM
Subject: Energy EO action items
[Energy Independence EO Implementation.2.docx](#)
[noi to reconsider oil and gas--2 \(003\).docx](#)
[noi to reconsider oil and gas--2 \(003\) \(002\).docx](#)

Per our earlier discussions, attached is the table of necessary actions and two draft ANPRMs

d.

David W. Schnare

Assistant Deputy Administrator

US. EPA

Energy Independence EO Implementation

EO Section	Action needed	Product & Assignment
Sec. 2(a)	i. Review of all existing regulations, orders, guidance documents, policies and other agency actions burdening the development or use of U.S. energy resources (esp. oil, gas, coal, nuclear) ii. Identify which are (1) mandated by law; (2) necessary for the public interest; (3) consistent with policy	Directive All AA's & RA's
Sec. 2(b)	Within 45 days, submit a plan to carry out above review to VP, OIRA & CEQ [Consider including Sec. 3 elements.]	Directive to OP
Sec. 2(c)	Within 120 days, submit the subsection (a) report	OP
Sec. 2(d)	Upon completion of the §2(c) report, commence repeal/reform of rules not: (1) mandated by law; (2) necessary for the public interest; (3) consistent with policy	ANPRMs Appropriate AAs
Sec. 3(c) Tab 2-13653 Tab 3-Power Tab 4-CAP Tab 5-Methn	i. Identify all existing regulations, orders, guidance documents, policies and other agency actions related to or arising from the Presidential Order/Memo or Climate Action Plans ii. To the extent permitted by law, repeal, reform or replace them	Directive All AA's & RA's
Sec. 4(a)	i. Initiate reconsider, revise or rescind: a. Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units b. Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units ii. and withdraw: Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules	ANPRM drafted OAR/OGC
Sec. 4(c)	Reconsider, revise or rescind: Legal Memorandum Accompanying Clean Power Plan for Certain Issues	Notice – OGC [coord. w/ DOJ]
Sec. 4(e)	Cease, curtail or deprioritize implementation of above rules.	Directive to OAR
Sec 5(a)	Use OMB Circular A-4 for Social Cost of Carbon	Directive to AAs
Sec. 7(a)	Reconsider, revise or rescind Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources	ANPRM drafted
Sec. 7(g)	Cease, curtail or deprioritize implementation of above rules.	Directive to OAR

To: Vanessa Leiby[Vanessa@WWEMA.org]
Cc: Anita Bermudez[anita@WWEMA.org]
From: Schnare, David
Sent: Tue 3/7/2017 2:54:28 PM
Subject: RE: Speaker Materials Request - WWEMA Washington Forum, March 22, 2017
[DavidSchnare2x3.jpg](#)
[WWEMA .pdf](#)
[Schnare Photo bio.docx](#)

Per your request:

David

From: Vanessa Leiby [mailto:Vanessa@WWEMA.org]
Sent: Monday, March 6, 2017 11:21 AM
To: Schnare, David <schnare.david@epa.gov>
Cc: Anita Bermudez <anita@WWEMA.org>
Subject: Speaker Materials Request - WWEMA Washington Forum, March 22, 2017
Importance: High

Good morning Dave. I suspect you have been extremely busy with the new administrator, budget issues, and getting the EPA house in order. As we are approaching the Washington Forum, would you have a moment to review the speaker request below and to complete and send me the attached speaker form. Please let me know if I can provide any further assistance. We are looking forward to hearing from you. Vanessa

1) Meeting Location and Time:

March 22, 2017

9:00 – 9:30 a.m.

The Westin Georgetown

2350 M Street, NW

Washington, DC 20037

- 2) Please complete the attached speaker registration form and return it to me by 3/1/17 at vanessa@wwema.org
- 3) Please submit a headshot and one paragraph bio that we can use for the program by 3/1/17 to vanessa@wwema.org
- 4) Please let me know if you would like me to make any edits to your presentation description in the program by 3/1/17.
- 5) If you plan to use a PowerPoint presentation, please submit an electronic copy to vanessa@wwema.org by 3/15/17.

Thanks again and I look forward to working with you and the new Administration! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: 240-678-4623

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

From: Vanessa Leiby

Sent: Tuesday, February 14, 2017 10:48 AM

To: 'schnare.david@epa.gov'

Cc: Anita Bermudez

Subject: Confirmation to Speak at WWEMA Washington Forum, March 22, 2017

Importance: High

Hi Dave – it was great to hear your voice and briefly catch up this morning! I am very pleased that you will be able to speak at our 44th WWEMA Washington Forum on Wednesday, March 22. Please see the attached Preliminary Agenda for information about the timing of your presentation and other meeting and hotel logistics. I have not yet formally assigned timeslots but the session will run from 9:00 – 10:30 a.m. I would be honored if you would be able to open our

meeting. Please see logistics and additional information requests, below:

1) Meeting Location and Time:

March 22, 2017

9:00 – 9:30 a.m.

The Westin Georgetown

2350 M Street, NW

Washington, DC 20037

2) Please complete the attached speaker registration form and return it to me by 3/1/17 at vanessa@wwema.org

3) Please submit a headshot and one paragraph bio that we can use for the program by 3/1/17 to vanessa@wwema.org

4) Please let me know if you would like me to make any edits to your presentation description in the program by 3/1/17.

5) If you plan to use a PowerPoint presentation, please submit an electronic copy to vanessa@wwema.org by 3/15/17.

Thanks again and I look forward to working with you and the new Administration! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: 240-678-4623

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

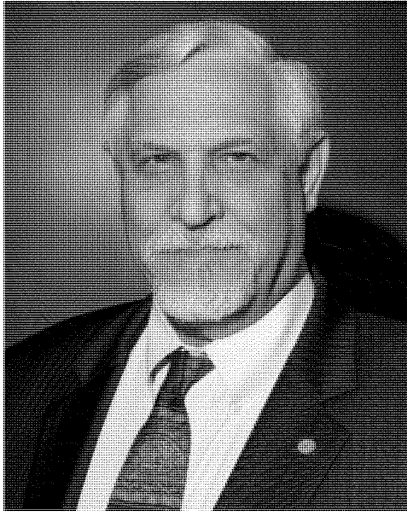
Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253



Dr. Schnare is EPA'S Acting Deputy Administrator. He is an attorney, scientist and author/editor of books, chapters and articles on environmental management, policy and law, reflecting a career as an environmental science and management professional and lecturer with government, academic and private sector experience consulting and litigating local, state, federal and international environmental risk management and free-market environmentalism issues. He returned to EPA from his positions with the Free-Market Environmental Law Clinic (Director), the Energy & Environment Legal Institute (General Counsel), and the Center for Environmental Stewardship at the Thomas Jefferson Institute for Public Policy (Director). He has a Master of Science in Public Health (MSPH), a Doctor of Philosophy in Environmental Management (Ph.D.) and a

Juris Doctor Cum Laude.

Formerly the nation's Chief Regulatory Analyst for small business, (Small Business Office of Advocacy), Dr. Schnare has both research science and legal experience, has been on Congressional Staff, served as a trial lawyer at the Department of Justice and in the Office of the Virginia Attorney General, and as a scientist and an enforcement counsel at the U.S. Environmental Protection Agency. He is a member of the Bars of the United States Supreme Court, U.S. Courts of Appeals for the Second, Fourth and Tenth Circuits, the Supreme Court of Virginia and the Court of Appeals of the District of Columbia, as well as multiple U.S. District Courts and state courts. He is an Administrative Law specialist with a federal, state and local practice and active in academic research and professional education; has regulatory experience with EPA, OSHA, IRS, NMFS, NOAA, FDA, HRSA, ATSDR, CDC, FAA, Bu. Rec., BLM, MMS, FWS, and the Corps of Engineers. He has served as an Adjunct Professor of Law at Antonin Scalia School of Law at George Mason University. He also has numerous scientific publications.

To: Patrick Davis **Personal Email/Ex. 6 -**
Cc: Sugiyama, George[sugiyama.george@epa.gov]
From: Schnare, David
Sent: Wed 3/1/2017 7:03:30 PM
Subject: RE: Perchlorate issue

This is something OP knows about. George, can you help out on the answer to this question?
It is up to Samantha as to whether to raise this to the Administrator.

d.

From: Patrick Davis [mailto:**Personal Email/Ex. 6 -**]
Sent: Wednesday, March 1, 2017 1:57 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: Perchlorate issue

David,

Received this from max Hamel. Is this on our radar ?

Patrick

Per our earlier discussion, after the election was told that EPA had prepared a draft Federal Register Notice (FRN) in preparation for their 2nd peer review meeting which includes proposed charge questions & proposed panel nominees for the peer review panel. Additionally, they drafted an MCLG report which uses the output of the draft BBDR (PBPK/PD) model to generate a potential perchlorate MCLGs for consideration by the 2d peer review panel. At this point, it is unclear whether or not this will be included in the FRN, although the original intent was to include it. Should make sure those don't get published to preserve your options.
Pardon the brevity, sent from my iPhone

To: Showman, John[Showman.John@epa.gov]
Cc: Vizian, Donna[Vizian.Donna@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 8:28:19 PM
Subject: RE: Word Version of Evaluation Criteria

Thanks.

d.

From: Showman, John
Sent: Monday, March 13, 2017 4:23 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Vizian, Donna <Vizian.Donna@epa.gov>
Subject: Word Version of Evaluation Criteria

As requested! ☺

From: Binder, Bruce
Sent: Monday, March 13, 2017 4:21 PM
To: Showman, John <Showman.John@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>;
Polk, Denise <Polk.Denise@epa.gov>
Subject: Evaluation Criteria

John, here is a word version of the evaluation document. Thanks.

Bruce S. Binder

United States Environmental Protection Agency

Office of Grants and Debarment

Senior Associate Director for Grants Competition

202-564-4935

Personal Matters/Ex. 6

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Schnare, David
Sent: Thur 3/9/2017 1:01:32 PM
Subject: Re: Contractor Qualifications to Manage the Lead Modelling Peer Review

Thanks Mike

Sent from my iPhone

On Mar 8, 2017, at 10:07 PM, Shapiro, Mike <Shapiro.Mike@epa.gov> wrote:

David,

You asked for information about ERG's qualifications to manage a major peer review. The paragraphs below are from ERG's discussion of their corporate and staff qualifications to manage the lead modelling peer review:

For OGWDW's Task Order, the two key staff are Jan Connery (for senior management, workshop facilitation, peer review summary report, and quality control) and Laurie Waite (task order management and coordination). Ms. Connery founded ERG's peer review practice in 1984 and has managed all of ERG's peer review contracts with NCEA since then, including the current contract. She has written dozens of peer review summary reports and facilitated dozens of EPA peer review workshops, including many on highly visible/controversial/contentious topics with numerous concerned stakeholders. Ms. Waite has been the primary task order manager for NCEA peer reviews at ERG since 2000. Over the past 16 years, she has successfully managed and coordinated hundreds of letter peer reviews for NCEA, as well as EPA's Office of Water (OW), ATSDR, OSHA, and NHTSA. In this role, she manages and coordinates each step of the peer review process.

Since 1984, ERG has organized well over a hundred in-person peer review panel meetings for EPA. Ms. Connery has served as the ERG facilitator (and the manager responsible for the development and quality control of the meeting report) for almost all these meetings. Ms. Waite has served as task order manager for most of the EPA in-person panel meetings ERG has organized for EPA since 2000.

ERG has managed the download from EPA's docket, compilation, and distribution

of public comments to external reviewers for dozens of EPA peer review workshops for which EPA solicited written public comments on the document being reviewed. Many of these were for IRIS assessments. In addition, ERG has extensive experience providing support for managing, documenting, summarizing, and responding to public comments for EPA regulatory actions.

Please let us know if you need more information. As I noted in my earlier message, we are anxious to get this work going since it is a key step in our path to improving our approach to managing lead in drinking water. Thanks.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Schnare, David
Sent: Tue 3/7/2017 1:45:02 PM
Subject: RE:

Deliberative Process Privilege/Ex. 5

dschnare

-----Original Message-----

From: Jackson, Ryan
Sent: Tuesday, March 7, 2017 8:28 AM
To: Schnare, David <schnare.david@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Subject:

What are are looking at now.

To: Hull, George[Hull.George@epa.gov]
From: Schnare, David
Sent: Wed 3/1/2017 7:00:39 PM
Subject: RE: Do you have any time today?

4:30pm

From: Hull, George
Sent: Wednesday, March 1, 2017 1:14 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: Do you have any time today?

David,

I wanted to follow up on our hallway conversation. Let me know if there is a time that is convenient for me to come by. Thanks, George

To: Vizian, Donna[Vizian.Donna@epa.gov]
From: Schnare, David
Sent: Wed 3/8/2017 10:34:17 PM
Subject: Re: Extension

Thx

Sent from my iPhone

On Mar 8, 2017, at 5:32 PM, Vizian, Donna <Vizian.Donna@epa.gov> wrote:

Suzanne has the paperwork to process your extension. They are working on it.

To: Kaplan, Robert[kaplan.robert@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 8:18:53 PM
Subject: RE: Delegation of authority

Use Justin and cc Jackson

From: Kaplan, Robert
Sent: Monday, March 13, 2017 4:16 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Delegation of authority

David,

Deliberative Process Privilege/Ex. 5

Any thoughts on how to proceed?

- Bob

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Cell: Personal Phone/Ex. 6

Direct: 312-886-1499

Main: 312- 886-3000

From: Schnare, David

Sent: Thursday, March 02, 2017 8:14 AM

To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>

Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>

Subject: Delegation of authority

Because the Presidentially-appointed Assistant Administrators and Regional Administrators have yet to assume their duties, for the next 30 days, the Administrator wishes to retain approval authority for Agency actions having significant regulatory and enforcement effect. The Administrator will rely on the Acting RA's and AA's to identify and send upward any proposed decisions or final agency actions for the Administrator's review which, in the judgement of the Acting RA's and AA's would limit the flexibility of the States, limit energy resource use, impose significant costs on industry or commerce, or otherwise likely result in significant public attention on the proposed decisions or final agency actions.

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Schnare, David
Sent: Tue 3/7/2017 1:43:15 PM
Subject: RE: RFS hardship denial recommendation

Call me and I'll talk you through it. This is fairly straightforward. If we don't deny them, we are changing a long-standing policy and will have to give notice and take comment on that change. We will be sued if we don't go through that process. We will have to provide an alternative criterion and support that criterion. I don't think there is such a criterion we could defend. The one we use "net refinery margin" is a standard measure used world-wide and has been one for decades.

The only reason this is a big deal is because we have not adequately explained to our friends on the Hill how we do these analyses. That we should do.

dschnare

From: Jackson, Ryan
Sent: Tuesday, March 7, 2017 8:38 AM
To: Schnare, David <schnare.david@epa.gov>
Cc: Brown, Byron <brown.byron@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: Re: RFS hardship denial recommendation

I can't guarantee today and this is a big deal to deny these petitions.

Ryan Jackson

Chief of Staff

U.S. EPA

Deliberative Process Privilege/Ex. 5

On Mar 7, 2017, at 6:17 AM, Schnare, David <schnare.david@epa.gov> wrote:

Please provide me your recommendation per the attached. It would be very helpful to deal with this today.

Samantha and I agree with the OAR recommendation denying the exemptions.

dschnare

<RFS Small Refinery Hardship Denials.docx>

To: John Hall[jhall@hall-associates.com]
From: Schnare, David
Sent: Fri 3/3/2017 4:07:59 PM
Subject: RE: Meeting request to discuss EPA support for peer reviews

probably

From: John Hall [mailto:jhall@hall-associates.com]
Sent: Friday, March 3, 2017 11:07 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Meeting request to discuss EPA support for peer reviews

David

That is good to know. Of course, if OW makes the call, the answer will be no – like before. Anything else would be an admission that something might be awry with their prior decision making.

Do you believe that a client/Congressional rep meeting with Administrator Pruitt is needed to make something positive happen?

Thanks

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: Schnare, David [<mailto:schnare.david@epa.gov>]
Sent: Friday, March 03, 2017 10:57 AM
To: John Hall
Subject: RE: Meeting request to discuss EPA support for peer reviews

Our folks are tracking your requests and I am monitoring them.

d.

From: John Hall [<mailto:jhall@hall-associates.com>]
Sent: Friday, March 3, 2017 10:45 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: Meeting request to discuss EPA support for peer reviews

David

As you know several requests have been submitted to address major EPA actions in PA, MA and MN that were based on junk science – or no science at all.

We believe that the best way to resolve the science issues is for the new administration to support the request for peer review (which the prior administration turned down for both Taunton and the PA TMDLs).

Please let me know if you have time to discuss whether EPA will support the request.

PS – Here is a Letter to the Editor CRR submitted to the Post on EPA's scientific abuses – of course it wasn't printed.

John

John C. Hall

Executive Director

Center for Regulatory Reasonableness

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: John Hall

Sent: Friday, February 10, 2017 12:10 PM

To: 'Schnare, David'

Subject: RE: Various Junk Science/Illegal Rulemaking Projects Soon to Land on Your Doorstep (can we chat when you have a few minutes)

David

I'm still working on your timeline request re: the other bad science projects I mentioned. The following cases are presently pending before various federal courts. Letters are being submitted to Administrator Pruitt asking for the matters to be placed in abeyance and EPA's position reconsidered:

Challenge to EPA Blending/Bacteria Mixing Zone Ban (CRR v. EPA – DC Cir): EPA ignored 8th Cir *ILOC v. EPA* ruling vacating the illegal/ultra vires NPDES rule modifications and re-imposed them in Nov. 2013. Nationwide cost several hundred billion for blending ban, even greater cost for bacteria mixing zone ban (basically means zero CSO discharge and disinfection of all stormwater discharges). Case pending decision. **Request:** Because briefing is completed, clarify to Court EPA decision to continue imposition of NPDES permitting prohibitions vacated in *ILOC v. EPA*, outside of the 8th Circuit.

Challenge to EPA Permit Action imposing State of the Art Nutrient Limits with No Site-Specific Water Quality Impacts Analyses (City of Taunton v. EPA – 1st Cir.): EPA declared entire Taunton estuary nutrient impaired and created new procedure to claim state of the art TN limits were required (aka “Sentinel Method”); Three top experts stated EPA analysis/Sentinel Method was grossly flawed - EPA HQ agreed new method had never undergone peer review or been demonstrated to be scientifically defensible. Nonetheless, EPA HQ refused to conduct peer review of new method, in violation of Peer Review Handbook governing use of new procedures to be used in regulatory setting. EPA/EAB claimed further technical justification was unnecessary because requirements may be imposed without any “cause and effect” demonstration – which basically re-writes CWA to allow EPA to impose stringent limits without site-specific demonstration of need. Opening briefs April 1, 2017. **Status:** Letter to be submitted from affected Cities shortly asking for matter to be moved to ADR process.

Challenge to Approval of MN Stream Nutrient Criteria with Unprecedented Nutrient Impairment Criteria (CRR. V EPA - DC Dist Ct): EPA promoted MN adoption of unprecedented nutrient impairment indicators (BOD and DO flux) and then approved them, even though EPA knew these parameters do not actually cause “impairment” and numerous non-nutrient factors affect them. EPA's action will result in classifying many additional waters nutrient impaired, when they are not. Nation's (and EPA's) leading expert on proper BOD test usage, *Standard Methods*, informed EPA using the test to predict nutrient impairment was improper – EPA also ignored the finding of this independent expert group. Parties filing motions

on administrative record. **Status:** Letter seeking reconsideration to be submitted next week. Expect contact from Congressional Representatives in support of action/reconsideration.

Challenge to NH MS4 permit (Filing on EPA NH action pending; Existing challenge to MA MS4 permit in DC Cir.): EPA radically modified MS4 permit, creating new mandates nowhere found in federal law or regulation and changing basic burden of proof for setting more restrictive requirements under CWA (presume causing impairment unless permittee proves otherwise); EPA action created federal review authority over all local land use permitting decisions – which is unprecedented overreach. NH Gov. Sununu expected to contact Administration for withdrawal of permit. Parties to meet thereafter. **Status:** Request for withdrawal of EPA MS4 permit already under consideration – ADR process likely avenue for relief.

Challenge to PA Nutrient TMDLs Using Junk Science to Impose Unattainable Reduction Mandates(Telford Boro et al v. EPA, ED PA): EPA created stringent nutrient limits for all of Eastern Pennsylvania using methods EPA’s Science Advisory Board stated were not scientifically defensible. The water quality limits EPA created are exceeded in natural background waters in Eastern PA and would require “pre-European” conditions (i.e., reforestation of entire watershed and removal of all human influences) to meet mandated nutrient load reduction requirements. Methods used to devise similar limits in nearby Wissahickon watershed also violate the laws of physics and nature (settling of dissolved substances, and plant growth occurring in the dead of winter and during major storm event when plant growth does not physically occur). EPA also rejected all field studies and peer reviewed literature confirming that plant growth would not be controlled with the proposed nutrient reduction program. **Status:** The Eastern PA communities and municipal trade assn’s will be meeting in end of February to coordinate Congressional assistance on seeking peer review of EPA’s arbitrary mandates. Letter to EPA expected in early March as well as Congressional inquiry.

PS – EPA recently proposed new blue-green algae “toxin” standards to create a basis for regulating phosphorus nationwide to extremely low levels. The analysis is so grossly incorrect and impacts on human health so clearly fabricated, it is embarrassing. Comments on this latest EPA masterpiece are due Feb 17, 2017.

-

Clearly, the New Administration has its hands full.

John

John C. Hall

Hall & Associates

1620 I Street, NW, Suite 701

Washington, DC 20006

Phone: 202-463-1166

Fax: 202-463-4207

E-Mail: jhall@hall-associates.com

The information contained in this e-mail is confidential and intended only for use by the individual or entity named. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by replying to this e-mail and destroying the original e-mail and any attachments thereto.

From: Schnare, David [<mailto:schnare.david@epa.gov>]

Sent: Thursday, January 26, 2017 6:05 PM

To: John Hall

Subject: RE: CRR Letter to New Administration - Request to Immediately Freeze NH Stormwater General Permit Issued by EPA January 18, 2017

John:

Can you send me a timeline and examples of the less than credible science R1 has been using, and that OW has approved. I need context and specifics to approach this issue. It would be very helpful if you cast that briefing in the context of EPA's Information Quality Act guidance. That is the tool I want to see used to pull the agency back into the mainstream.

d.

To: Bromberg, Kevin L.[kevin.bromberg@sba.gov]
From: Schnare, David
Sent: Wed 3/8/2017 8:23:45 PM
Subject: RE: Schnare Files

Priceless stuff no doubt. . .

From: Bromberg, Kevin L. [mailto:kevin.bromberg@sba.gov]
Sent: Wednesday, March 8, 2017 2:32 PM
To: Schnare, David <schnare.david@epa.gov>; Maresca, Charles A.
<Charles.Maresca@sba.gov>
Subject: Schnare Files

Still have these on our S:/drive


S:/Old Files/Old Shared Folders/Schnare Files

Broken into Econ Roundtable Files, Practitioners Manual Files and SARA Files



As I recall = the Practitioners File is RFA Guidance for the Agencies


 Kevin Bromberg

Assistant Chief Counsel for Environmental Policy

 SBA // Office of Advocacy

409 3rd St. SW, Washington, D.C. 20416

 kevin.bromberg@sba.gov  202.481.2963

 Personal Phone/Ex. 6



To: Sharma, Prianka P.[Prianka.Sharma@sba.gov]
From: Schnare, David
Sent: Mon 3/13/2017 7:13:06 PM
Subject: Re: The Future of Environmental Law Under the Trump Administration (Webinar)

Yes

Sent from my iPhone

> On Mar 13, 2017, at 3:06 PM, Sharma, Prianka P. <Prianka.Sharma@sba.gov> wrote:

>

> Is this still on?

>

> -----Original Appointment-----

> From: Sharma, Prianka P.

> Sent: Thursday, March 09, 2017 1:43 PM

> To: Sharma, Prianka P.; Bromberg, Kevin L.; Waqar, Tayyaba; Rostker, David J.; Fekete, Stephanie P.; Maresca, Charles A.; Porat, Jonathan; McManus, Michael J.

> Subject: FW: The Future of Environmental Law Under the Trump Administration (Webinar)

> When: Monday, March 13, 2017 5:30 PM-7:30 PM (UTC-05:00) Eastern Time (US & Canada).

> Where: Advo Conference Room

>

>

> Kevin-

>

> Do you still want to do this with the supposed impending weather? I have the call-in information, so perhaps we may be able to call-in individually?

>

> Best,

> Prianka

>

> -----Original Appointment-----

> From: Sharma, Prianka P.

> Sent: Thursday, March 09, 2017 1:43 PM

> To: Sharma, Prianka P.; Bromberg, Kevin L.; Waqar, Tayyaba; Rostker, David J.; Fekete, Stephanie P.; Maresca, Charles A.; Porat, Jonathan; McManus, Michael J.

> Subject: The Future of Environmental Law Under the Trump Administration (Webinar)

> When: Monday, March 13, 2017 5:30 PM-7:30 PM (UTC-05:00) Eastern Time (US & Canada).

> Where: Advo Conference Room

>

>

> Program Overview:

>

> Dr. David Schnare, who was part of President-elect Trump's EPA Transition Landing Team, headlines a distinguished panel of experts to discuss the Trump Administration's environmental law agenda at an EBA Energizer on March 13 from 5:30pm to 7:30pm at Hogan Lovells US LLP in Washington, DC. Panelists will focus particularly on the impact of environmental laws on the energy sector. Rep. Dr. Schnare will be joined by Matt Kellogg, senior policy advisor and counsel to U.S. House Majority Leader Kevin McCarthy, and Richard Alonso, a partner with Bracewell LLP. Justin Savage, a partner with Hogan Lovells will moderate the event. This program is presented by the EBA's Environmental Regulation Committee.

>

> Thanks to our Sponsor:

> Hosted By: Hogan Lovells US LLP

>

> Moderator:

> Justin Savage, Partner, Hogan Lovells US LLP

>

> Panelists:

> Richard Alonso, Partner, Bracewell LLP

> Matthew Kellogg, Senior Policy Advisor & Counsel, House Majority Leader Kevin McCarthy, U.S. House of Representatives

> Dr. David Schnare, Esq., Ph.D, Environmental Protection Agency (EPA) Transition Team and Landing Team

> <meeting.ics>

From: Schnare, David
Location: 3233 WJCE
Importance: Normal
Subject: Accepted: Clean Water Rule
Start Date/Time: Wed 1/25/2017 3:00:00 PM
End Date/Time: Wed 1/25/2017 3:45:00 PM

Non-responsive Conference Code/Ex.6

From: Schnare, David
Location: 3402 WJC-N
Importance: Normal
Subject: Accepted: Discussion on facilities in Las Vegas with Donna V.
Start Date/Time: Fri 3/3/2017 8:00:00 PM
End Date/Time: Fri 3/3/2017 8:30:00 PM

To: Grantham, Nancy[Grantham.Nancy@epa.gov]
Cc: loren.smith@dot.gov[loren.smith@dot.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 5:40:21 PM
Subject: Re: Word version mte

Thank you all on this very timely effort

d

Sent from my iPhone

> On Mar 13, 2017, at 1:38 PM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:

>

> Please find attached, the word version.

>

> Thanks

>

> Nancy Grantham

> Office of Public Affairs

> US Environmental Protection Agency

> 202-564-6879 (desk)

> 202-253-7056 (mobile)

>

>

> -----Original Message-----

> From: Knapp, Kristien

> Sent: Monday, March 13, 2017 1:28 PM

> To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>

> Subject: Word version mte

>

>

>

> <CAFE-FINAL FINAL-joint-notice-DOT-EPA (002).docx>

>

>

>

> Sent from my iPhone

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Schnare, David
Sent: Tue 3/7/2017 3:20:51 AM
Subject: Leave

Personal Matters/Ex. 6

d

Sent from my iPhone

From: Schnare, David
Location: 3402 WJC-N
Importance: Normal
Subject: Accepted: Discussion on facilities in Las Vegas with Donna V.
Start Date/Time: Fri 3/3/2017 4:00:00 PM
End Date/Time: Fri 3/3/2017 4:30:00 PM

To: Dunham, Sarah[Dunham.Sarah@epa.gov]
From: Schnare, David
Sent: Wed 3/8/2017 8:11:59 PM
Subject: RE: CAFE Notice

Thx.

New subject. We need to talk about the RFS Small Refineries Exemptions denials. Pruitt made up his mind about them this am and I need to convey where he is at.

d.

From: Dunham, Sarah
Sent: Wednesday, March 8, 2017 2:38 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: CAFE Notice

Ok—if its necessary to have a program office contact, Bill Charmley would be the best contact.

From: Dunham, Sarah
Sent: Wednesday, March 08, 2017 2:23 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: CAFE Notice

I'm running someone down. (I had thought David Orlin from OGC had agreed to have his name listed if we needed to have an EPA name)

From: Schnare, David
Sent: Wednesday, March 08, 2017 2:09 PM
To: Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: CAFE Notice

Sarah:

I need the name of a person, presumably in OTAQ, who will be named as the contact in the CAFÉ FR Notice. I need this asap as I want to get this signed by the Administrator today. Can you get me someone's name immediately?

Dschnare

To: Knapp, Kristien[Knapp.Kristien@epa.gov]
Cc: Grantham, Nancy[Grantham.Nancy@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 5:35:44 PM
Subject: Re: mte notice

Kristen
Loren needs the word version, also asap. Who has that?

Sent from my iPhone

> On Mar 13, 2017, at 1:26 PM, Knapp, Kristien <Knapp.Kristien@epa.gov> wrote:
>
> Just handed to Loren.
>
> Sent from my iPhone
>
>> On Mar 13, 2017, at 1:21 PM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:
>>
>> Thx
>>
>> Sent from my iPhone
>>
>>> On Mar 13, 2017, at 1:14 PM, Knapp, Kristien <Knapp.Kristien@epa.gov> wrote:
>>>
>>> I'm in a taxi now en route to DOT.
>>>
>>> Sent from my iPhone
>>>
>>> Begin forwarded message:
>>>
>>> From: <DC-WJCN-3312-M@epa.gov<mailto:DC-WJCN-3312-M@epa.gov>>
>>> Date: March 13, 2017 at 1:15:50 PM EDT
>>> To: <knapp.kristien@epa.gov<mailto:knapp.kristien@epa.gov>>
>>>
>>> <image2017-03-13-131549.pdf>

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Schnare, David
Sent: Tue 3/7/2017 3:17:44 AM
Subject: Re: FR Notices

Thx

Sent from my iPhone

> On Mar 6, 2017, at 10:04 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

>

Deliberative Process/Attorney-Client/Ex. 5

>

> Kevin

>

> Kevin S. Minoli

> Acting General Counsel

> Office of General Counsel

> US Environmental Protection Agency

> Main Office Line: 202-564-8040

From: Schnare, David
Location: WJC-N 3415
Importance: Normal
Subject: Accepted: Hot Issues Check-in
Start Date/Time: Wed 3/1/2017 8:00:00 PM
End Date/Time: Wed 3/1/2017 8:30:00 PM

To: Middleton, Brandon (ENRD)[Brandon.Middleton@usdoj.gov]
From: Schnare, David
Sent: Wed 3/1/2017 3:15:17 PM
Subject: RE: CPP litigation

??? You wanted my number. I don't understand what you just wrote me.

d.

From: Middleton, Brandon (ENRD) [mailto:Brandon.Middleton@usdoj.gov]
Sent: Wednesday, March 1, 2017 10:14 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: Re: CPP litigation

Yes he was on call late yesterday afternoon I was under impression that Byron brown would be on call but don't think he made it

Sent from my iPhone

On Mar 1, 2017, at 10:10 AM, Schnare, David <schnare.david@epa.gov> wrote:

202-564-3073

From: Middleton, Brandon (ENRD) [mailto:Brandon.Middleton@usdoj.gov]
Sent: Wednesday, March 1, 2017 9:46 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: CPP litigation

Attorney-Client//Deliberative Process/Ex. 5

Attorney-Client/Ex. 5/ Deliberative Process Ex. 5

What is your direct?

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Wednesday, March 01, 2017 7:06 AM
To: Middleton, Brandon (ENRD) <BMiddleton@ENRD.USDOJ.GOV>

Subject: RE: CPP litigation

Briefly. We have not concentrated on this rule yet, lacking an executive order from which to operate.

I'll discuss with him the recent motion of some of the plaintiffs to sever the one and join the other. In general, anything that delays the CPP case in chief will help for the moment as we await the EO.

What is your position on the motion to sever?

dschnare

From: Middleton, Brandon (ENRD) [<mailto:Brandon.Middleton@usdoj.gov>]
Sent: Tuesday, February 28, 2017 8:33 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: Re: CPP litigation

Ok have you spoken/consulted with Kevin m on response to severance motion?

Sent from my iPhone

On Feb 28, 2017, at 7:32 PM, Schnare, David <schnare.david@epa.gov> wrote:

Use me on this issue.

David Schnare.

Sent from my iPhone

On Feb 28, 2017, at 7:30 PM, Middleton, Brandon (ENRD)
<Brandon.Middleton@usdoj.gov> wrote:

Gentlemen,

Who are the right contact/contacts for new administration on ongoing CPP litigation? I have been in touch with Kevin M., but want to make sure I understand entire scope of personnel I should be discussing this with. Does Byron Brown have an EPA email yet? [I don't want to bother Ryan J unnecessarily]

Thanks.

Brandon M.

Special Assistant and Counsel

DOJ ENRD

To: Greaves, Holly[greaves.holly@epa.gov]
From: Schnare, David
Sent: Fri 3/3/2017 3:17:39 PM
Subject: RE: Climate funding

thx

-----Original Message-----

From: Greaves, Holly
Sent: Friday, March 3, 2017 10:17 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: Climate funding

Hi David, attached please find a soft copy of the climate change funding. Please let me know if you need anything else.

Holly

>

To: Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]
From: Schnare, David
Sent: Wed 3/8/2017 6:59:32 PM
Subject: RE: 2:00 Possible?

3402

From: Cleland-Hamnett, Wendy
Sent: Wednesday, March 8, 2017 1:59 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: RE: 2:00 Possible?

Will head over. What's your room number?

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

From: Schnare, David
Sent: Wednesday, March 08, 2017 1:52 PM
To: Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>
Subject: Re: 2:00 Possible?

Yep

Sent from my iPhone

On Mar 8, 2017, at 1:50 PM, Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov> wrote:

While I was out at meetings, my 1:00 was moved to 3.

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

To: Grantham, Nancy[Grantham.Nancy@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 5:05:00 PM
Subject: Fwd: CAFE notice

Please handle and let me know.
d

Sent from my iPhone

Begin forwarded message:

From: "Smith, Loren (OST)" <Loren.Smith@dot.gov>
Date: March 13, 2017 at 12:59:48 PM EDT
To: David Schnare <schnare.david@epa.gov>
Subject: CAFE notice

Please email me the final Word doc version as well - it is part of the Federal Register submission process.

Sent from my iPhone

To: Benton, Donald[benton.donald@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Allen, Reginald[Allen.Reginald@epa.gov]; Reeder, John[Reeder.John@epa.gov]
From: Schnare, David
Sent: Tue 2/14/2017 1:18:21 AM
Subject: Pruitt oath

Will be at 2 pm Friday. Jackson will talk to Pruitt tonight to see if he wants to do anything on Friday. I suggested we do PSD and an informal discussion of the major issues list. We then do day one on Tuesday.

dschnare

Sent from my iPhone

To: Konkus, John[konkus.john@epa.gov]
From: Schnare, David
Sent: Mon 3/6/2017 11:27:31 PM
Subject: Fwd: moment to chat?

I told her to contact us through the normal channels.

Sent from my iPhone

Begin forwarded message:

From: "Davenport, Coral" <coral.davenport@nytimes.com>
Date: March 6, 2017 at 6:24:42 PM EST
To: schnare.david@epa.gov
Subject: moment to chat?

Hi, David,
I hope you're well. I'm working on a story on how things are going at the start of Pruitt's administration of EPA. Would you have a moment to chat?
Cheers,
Coral

--

Coral Davenport
Energy and Environment Correspondent
The New York Times
Washington Bureau
1627 I St. NW, Suite 700
Washington, DC 20006
coral.davenport@nytimes.com
O 202-862-0359
C 703-618-0645
Twitter @CoralMDavenport

To: Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]
From: Schnare, David
Sent: Wed 3/8/2017 6:51:32 PM
Subject: Re: 2:00 Possible?

Yep

Sent from my iPhone

On Mar 8, 2017, at 1:50 PM, Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov> wrote:

While I was out at meetings, my 1:00 was moved to 3.

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

To: Flynn, Mike[Flynn.Mike@epa.gov]
From: Schnare, David
Sent: Wed 3/8/2017 6:45:53 PM
Subject: Daily hot issues 3-8-2017
DRAFT 3-8-2017 Daily Hot Topics.docx

As requested.

d.

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Brown, Byron[brown.byron@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 3:24:10 PM
Subject: Re:

I'm checking on that. It's in DOT's hands.

Sent from my iPhone

On Mar 13, 2017, at 11:15 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

I will be printed Wednesday for sure? What is the timing?

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

On Mar 13, 2017, at 10:05 AM, Schnare, David <schnare.david@epa.gov> wrote:

We submitted it tomorrow and it is printed Wednesday

Sent from my iPhone

On Mar 13, 2017, at 10:03 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

How do we get the Fed Register notice to appear Wednesday?

It's a request from the WH. Can we simply submit it now?

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

Personal Phone/Ex. 6

To: milloy Personal Address/Ex. 6
From: Schnare, David
Sent: Mon 3/6/2017 7:56:21 PM
Subject: Fwd: status of RFS small refinery waiver requests

Here is the current list. We have not yet done the denials. That is being raised on high.

Sent from my iPhone

Begin forwarded message:

From: "Dunham, Sarah" <Dunham.Sarah@epa.gov>
Date: March 6, 2017 at 2:53:01 PM EST
To: "Schnare, David" <schnare.david@epa.gov>
Subject: status of RFS small refinery waiver requests

Here's the table that lists all the waiver requests. The first 6 identified in the table have all been responded to (all were granted).

		Staff Recommendation		Target/Issue
	Petitioner	DOE		
1	Calumet Shreveport (Shreveport, LA)	Grant	Grant	Issued 2/10
2	Calumet San Antonio (San Antonio, TX)	Grant	Grant	Issued 2/10
3	Alon (Krotz Springs, LA)	50%	Grant	Issued 2/10
4	Continental Refining (Somerset, KY)	Grant	Grant	Issued 2/24
5	Lion Oil (El Dorado, AK)	50%	Grant	Issued 3/1
6	Hunt Refining			

	(Tuscaloosa, AL)	Grant	Grant	Issued 3/1
7	Calumet Montana			
	(Great Falls, MT)	50%	Deny	Holding
8	Ergon Refining, Inc			
	(Newll, WV)	Deny	Deny	Holding
9	Ergon-WV			
	(Newell, WV)	50%	Deny	Holding
10	Calumet Superior			
	(Superior, WI)	50%	Deny	Holding
11	American Refining			
	(Bradford, PA)	tbd	tbd (late submittal)	target 3/17

From: Schnare, David
Location: WJC-N 3415
Importance: Normal
Subject: Accepted: Hot Issues Check-in
Start Date/Time: Wed 3/1/2017 8:30:00 PM
End Date/Time: Wed 3/1/2017 9:00:00 PM

From: Schnare, David
Location: 3402 WJC-N
Importance: Normal
Subject: Accepted: Discussion on facilities in Las Vegas with Donna V.
Start Date/Time: Fri 3/3/2017 3:30:00 PM
End Date/Time: Fri 3/3/2017 4:00:00 PM

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 3:21:59 PM
Subject: Re: CAFE Mid-Term Evaluation

I will take the meeting.

dschnare

Sent from my iPhone

On Mar 13, 2017, at 11:17 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

David can you help me with this.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone/Ex. 6

Begin forwarded message:

From: "Thomasson, Russell (WAS-CAS)" <RThomasson@cassidy.com>
Date: March 13, 2017 at 8:46:45 AM EDT
To: "Ryan Jackson" <jackson.ryan@epa.gov>
Subject: FW: CAFE Mid-Term Evaluation

Sorry, meant to send to your official address. Realize this is a stretch but thanks for considering.

Russell J. Thomasson
Executive Vice President
733 Tenth Street, NW, Suite 400
Washington, DC 20001
202.585.2554 (direct)
202.826.4491 (cell)
www.cassidy.com
<A032E015-6AAE-49FF-8ADD-E485C07A1E5F[210].png>

From: Russell Thomasson <RThomasson@cassidy.com>
Date: Friday, March 10, 2017 at 12:46 PM
To: Ryan Jackson <ryanthjackson@gmail.com>
Subject: FW: CAFE Mid-Term Evaluation

Ryan, I realize you are completely slammed and that there is no way you can handle everything coming at you! Arconic (they spun off from Alcoa) is looking for a meeting with someone who can talk upcoming CAFE changes. Recognize this probably isn't possible, but if there was someone from them to do a quick call with so they can lay out their concerns, I would appreciate it. Thanks Russ

Russell J. Thomasson
Executive Vice President
733 Tenth Street, NW, Suite 400
Washington, DC 20001
202.585.2554 (direct)
202.826.4491 (cell)
www.cassidy.com

CASSIDY&ASSOCIATES

From: "Belwood, Mike E." <Mike.Belwood@arconic.com>
Date: Friday, March 10, 2017 at 11:48 AM
To: Russell Thomasson <RThomasson@cassidy.com>
Subject: CAFE Mid-Term Evaluation

Russ:

We are hearing that EPA/NHTSA will announce next week that they are putting the MTE back to regular order, rescinding EPA's determination in January that the rule should stand. There's also some indication that there is support for using this process to roll back CAFE. Arconic and the aluminum industry have worked with the automakers and support their call for One National Program, but we are growing increasingly concerned that our interest in this issue is not fully understood.

Since 2102, we have invested \$750 million to expand capacity in the US to support the growing use of aluminum in cars and trucks. As an industry, aluminum has invested nearly \$3 billion to expand to serve this growing need, creating thousands of jobs.

We would like to make sure that the team guiding this process understands this. Would it be possible to meet with someone at EPA prior to the upcoming announcement so they have this perspective? And with more time on both sides, we can bring in our executives for a more full discussion. We are very willing to serve as a resource for the supplier industry as the process unfolds.

Appreciate your thoughts and help.

Michael E. Belwood

Vice President, Government Affairs

Arconic

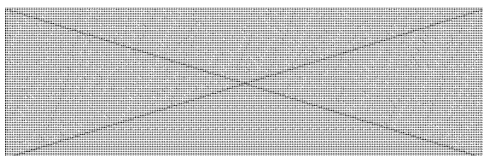
1050 K St NW, Suite 1100

Washington, DC 20001

(O) +1 202-956-5315

(C) +1 812-604-0530

Arconic.com / mike.belwood@arconic.com



This message contains information which may be confidential and privileged. Unless you are the intended recipient (or authorized to receive this message for the intended recipient), you may not use, copy, disseminate or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail, and delete the message. Thank you very much.

***** ATTACHMENT REMOVED *****

This message contained an attachment which the administrator has caused to be removed.

***** ATTACHMENT REMOVED *****

Attachment name: [image001.jpg]

Attachment type: [image/jpeg]

CASSIDY&ASSOCIATES

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Schnare, David
Sent: Mon 3/6/2017 7:23:34 PM
Subject: WOTUS

Is there a huddle planned on this, say on Wednesday?

d.

To: Kenny, Shannon[Kenny.Shannon@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]
From: Schnare, David
Sent: Wed 3/1/2017 12:19:16 PM
Subject: FW: Regulatory Review Update

Where are we in reviewing the category 1 rules, midnight (extended effective date) and FR queue?

dschnare

From: Williams, Michael B. EOP/OMB [REDACTED] **EOP/Ex. 6**
Sent: Tuesday, February 28, 2017 6:11 PM
To: Schnare, David <schnare.david@epa.gov>; Benton, Donald <benton.donald@epa.gov>
Cc: Campau, Anthony <[REDACTED]> **EOP/Ex. 6**
Subject: Regulatory Review Update

David and Don,

Thanks so much for your work on the pending regulations list you sent last week. Do you have time this week to jump on a call with Anthony and me to discuss your comments and recommended actions? [REDACTED] **Deliberative Process Privilege/Ex. 5**

Deliberative Process Privilege/Ex. 5 Feel free to include any other relevant members of your team.

Best,

Michael

Michael B. Williams

Legal

Office of Management and Budget

(c)

Personal Matters/Ex. 6

To: Brown, Byron[brown.byron@epa.gov]
From: Schnare, David
Sent: Wed 3/8/2017 6:31:35 PM
Subject: FW: Delegation of authority

My apologies for not including you on the distribution list.

d.

From: Schnare, David
Sent: Thursday, March 2, 2017 9:14 AM
To: 2017HQfirstassistants <2017HQfirstassistants@epa.gov>; 2017Regionfirstassistants <2017Regionfirstassistants@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Delegation of authority

Because the Presidentially-appointed Assistant Administrators and Regional Administrators have yet to assume their duties, for the next 30 days, the Administrator wishes to retain approval authority for Agency actions having significant regulatory and enforcement effect. The Administrator will rely on the Acting RA's and AA's to identify and send upward any proposed decisions or final agency actions for the Administrator's review which, in the judgement of the Acting RA's and AA's would limit the flexibility of the States, limit energy resource use, impose significant costs on industry or commerce, or otherwise likely result in significant public attention on the proposed decisions or final agency actions.

To: Ericksen, Doug[ericksen.doug@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 2:24:18 PM
Subject: Re: Ericksen

I'm here. Stop by when you want.

D

Sent from my iPhone

On Mar 13, 2017, at 9:27 AM, Ericksen, Doug <ericksen.doug@epa.gov> wrote:

David,

I am in the building today. You have a few minutes to catch up on a few items?

Ericksen

To: Kime, Robin[Kime.Robin@epa.gov]
From: Schnare, David
Sent: Mon 3/6/2017 7:22:41 PM
Subject: RE: WOTUS Meeting with OW Wednesday

Robin:

I am not seeing a meeting on my calendar for wed. on WOTUS

d.

From: Kime, Robin
Sent: Monday, March 6, 2017 2:20 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: WOTUS Meeting with OW Wednesday

Hi

I hope you are well. Samantha asked me to see if you wouldn't mind if she joined in Wednesday's WOTUS meeting with OW.

To: Vizian, Donna[Vizian.Donna@epa.gov]
From: Schnare, David
Sent: Wed 3/1/2017 12:17:12 PM
Subject: RE: Pay

thx

-----Original Message-----

From: Vizian, Donna
Sent: Wednesday, March 1, 2017 7:14 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: Pay

GM. **Personal Matters/Ex. 6** The coding was done last week.

To: Hale, Michelle[hale.michelle@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]; Reeder, John[Reeder.John@epa.gov]
From: Schnare, David
Sent: Tue 2/21/2017 5:31:39 PM
Subject: FW: INVITATION: 2017 ACWA Mid-Year Meeting
Adm Pruitt MYM Invitation FINAL.pdf

For potential scheduling.

We need to examine the meeting opportunities the Administrator has and determine if this is one he would want to use.

dschnare

From: Julia Anastasio [mailto:janastasio@acwa-us.org]
Sent: Tuesday, February 21, 2017 12:06 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: INVITATION: 2017 ACWA Mid-Year Meeting
Importance: High

Dear Mr. Schnare:

Please see the attached invitation inviting Administrator Pruitt to speak to the members of the Association of Clean Water Administrations on March 20, 2017.

Thank you for your consideration.

Julia Anastasio

Julia Anastasio

Executive Director & General Counsel

Association of Clean Water Administrators

202.756.0600 (O)

202.746.8017 (c)

To: Catanzaro, Michael J. EOP/WHO [REDACTED] **EOP/Ex. 6**
Cc: Smith, Loren (OST) [Loren.Smith@dot.gov]
From: Schnare, David
Sent: Mon 3/13/2017 2:23:45 PM
Subject: Re: CAFE Notice signature copy

Loren

Can you let me know when steps to ensure publication on Wednesday are in place. Usually a notice sent before noon on Tuesday guarantees a Wed publication.

d

Sent from my iPhone

On Mar 13, 2017, at 9:36 AM, Catanzaro, Michael J. EOP/WHO

[REDACTED] **EOP/Ex. 6** wrote:

Just wanted to be sure that we can have this document on display in the Fed Register on Wednesday, day of POTUS event in MI. Are we on track for that?

From: Schnare, David [mailto:schnare.david@epa.gov]
Sent: Thursday, March 9, 2017 8:36 PM
To: Smith, Loren (OST) <Loren.Smith@dot.gov>
Cc: McCown, Brigham (OST) <brigham.mccown@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; Smith, Ja'Ron K. EOP/WHO [REDACTED] **EOP/Ex. 6**; Catanzaro, Michael J. EOP/WHO [REDACTED] **EOP/Ex. 6**; Moran, John S. EOP/WHO [REDACTED] **EOP/Ex. 6**; Fulton, Finch (OST) <Finch.Fulton@dot.gov>
Subject: Re: CAFE Notice signature copy

Deliberative Process Privilege/Ex. 5

dschnare

On Mar 9, 2017, at 4:13 PM, Smith, Loren (OST) <Loren.Smith@dot.gov> wrote:

Received – thank you!

From: Schnare, David [mailto:schnare.david@epa.gov]

Sent: Thursday, March 09, 2017 2:49 PM
To: Smith, Loren (OST)
Cc: McCown, Brigham (OST); Pugliese, Anthony (OST); Ja'Ron Smith; Michael Catanzaro; John.S.Moran@EOP/Ex. 6; Fulton, Finch (OST)
Subject: RE: CAFE Notice signature copy

Loren:

I gave our assistant your name and phone number.

d.

From: Smith, Loren (OST) [mailto:Loren.Smith@dot.gov]
Sent: Thursday, March 9, 2017 2:48 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: McCown, Brigham (OST) <brigham.mccown@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; Ja'Ron Smith <EOP/Ex. 6>; Michael Catanzaro <EOP/Ex. 6>; John.S.Moran@EOP/Ex. 6; Fulton, Finch (OST) <Finch.Fulton@dot.gov>
Subject: Re: CAFE Notice signature copy

To whom is it being delivered?

You can give my name for the delivery, or simply to the Immediate Office of the Secretary.

Or send it to:

Ruth Knouse

Director

Executive Secretariat

On Mar 9, 2017, at 2:45 PM, Schnare, David <schnare.david@epa.gov> wrote:

We have autopen'd the final notice and it is being carried over to you for the Secretary's signature. OFR requires both signatures on the same document. Once you have it signed by the Secretary, please hold it until we know when to send it to OFR. Then your folks can send it to OFR.

Thanks,
dschnare

From: Jackson, Ryan
Sent: Thursday, March 9, 2017 6:44 AM
To: Schnare, David <schnare.david@epa.gov>
Cc: Smith, Loren (OST) <Loren.Smith@dot.gov>; McCown, Brigham (OST) <brigham.mccown@dot.gov>; Pugliese, Anthony (OST) <anthony.Pugliese@dot.gov>; Ja'Ron Smith <[REDACTED] EOP/Ex. 6>; Michael Catanzaro <[REDACTED] EOP/Ex. 6>; John.S.Moran <[REDACTED] EOP/Ex. 6>; Fulton, Finch (OST) <Finch.Fulton@dot.gov>
Subject: Re: Dave/all - re CAFE - here is DOT's final draft

Thanks David for all the work We'll sign it today.

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

On Mar 8, 2017, at 1:35 PM, Schnare, David <schnare.david@epa.gov> wrote:

Thank you Loren. I will get a name put into the proper place and send the final final back to you for signature.

I'm not sure when our Administrator will be signing this. He is in today but out the

rest of the week. We will find a way to get this done as quickly as possible. I'll let you know when we have a signed copy.

David W. Schnare

Assistant Deputy Administrator

From: Smith, Loren (OST) [<mailto:Loren.Smith@dot.gov>]

Sent: Wednesday, March 8, 2017 11:14 AM

To: Schnare, David <schnare.david@epa.gov>; Jackson, Ryan

<jackson.ryan@epa.gov>; McCown, Brigham (OST)

<brigham.mccown@dot.gov>; Pugliese, Anthony (OST)

<anthony.Pugliese@dot.gov>; Ja'Ron Smith <[EOP/Ex. 6](#)>;

Michael Catanzaro <[EOP/Ex. 6](#)>;

John.S.Moran@[EOP/Ex. 6](#) Fulton, Finch (OST) <Finch.Fulton@dot.gov>

Subject: Dave/all - re CAFE - here is DOT's final draft

As yet unsigned - need EPA to insert contact info and remove your original draft label. Presume next step is for your team to review and submit for Administrator Pruitt's signature, then back to DOT.

Please let me know that you've received and your vision of plan forward.

+++

Loren Smith

U.S. Department of Transportation

West Building – W85-115

loren.smith@dot.gov

202-430-2952

To: Kime, Robin[Kime.Robin@epa.gov]
From: Schnare, David
Sent: Mon 3/6/2017 7:21:34 PM
Subject: RE: WOTUS Meeting with OW Wednesday

She is, of course, welcome.

d

From: Kime, Robin
Sent: Monday, March 6, 2017 2:20 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: WOTUS Meeting with OW Wednesday

Hi

I hope you are well. Samantha asked me to see if you wouldn't mind if she joined in Wednesday's WOTUS meeting with OW.

To: Greaves, Holly[greaves.holly@epa.gov]
From: Schnare, David
Sent: Fri 3/3/2017 12:41:19 PM
Subject: climate budget

Holly:

Deliberative Process Privilege/Ex. 5

thx.

dschnare

To: Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]
Cc: Flynn, Mike[Flynn.Mike@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
From: Schnare, David
Sent: Wed 3/8/2017 5:21:11 PM
Subject: Re: TBBPA Section 21 Petition

I will check in on this but will recommend that we go the same direction.

Sent from my iPhone

On Mar 8, 2017, at 11:03 AM, Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov> wrote:

Deliberative Process Privilege/Ex. 5

If you're all more comfortable, we'll send up another one-pager on this one. Just thought I might save us all a transaction.

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

From: Schnare, David
Sent: Wednesday, March 08, 2017 10:53 AM
To: Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>
Cc: Flynn, Mike <Flynn.Mike@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Re: TBBPA Section 21 Petition

Does it involve PFOS etc?

Sent from my iPhone

On Mar 8, 2017, at 10:51 AM, Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov> wrote:

Thanks for letting me know. In my weekly update, **Deliberative Process Privilege/Ex. 5**

Deliberative Process Privilege/Ex. 5

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

From: Schnare, David
Sent: Wednesday, March 08, 2017 10:42 AM
To: Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>
Cc: Flynn, Mike <Flynn.Mike@epa.gov>; Dravis, Samantha

<dravis.samantha@epa.gov>

Subject: TBBPA Section 21 Petition

Deliberative Process Privilege/Ex. 5

dschnare

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Brown, Byron[brown.byron@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 2:05:43 PM
Subject: Re:

We submitted it tomorrow and it is printed Wednesday

Sent from my iPhone

On Mar 13, 2017, at 10:03 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

How do we get the Fed Register notice to appear Wednesday?

It's a request from the WH. Can we simply submit it now?

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

Ex. 6

From: Schnare, David
Importance: Normal
Subject: Accepted: Call with HQ
Start Date/Time: Mon 3/6/2017 9:30:00 PM
End Date/Time: Mon 3/6/2017 10:00:00 PM

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 1:06:25 PM
Subject: FW: American Iron and Steel Waiver Request
Akron OH Availability Waiver 2 13 17.docx
transmittal memo 2017 akron OH (FINAL).docx

Ryan:

This is the water issue to which I referred this morning. Shapiro needs an ok to get this project approved.

d

From: Shapiro, Mike
Sent: Friday, March 10, 2017 4:59 PM
To: Flynn, Mike <Flynn.Mike@epa.gov>; Schnare, David <schnare.david@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: American Iron and Steel Waiver Request

All,

I want to make you aware of a Clean Water State Revolving Fund (CWSRF) American Iron and Steel waiver request that we are preparing to approve. For background, CWSRF assistance recipients must use specific domestic iron and steel products that are produced in the United States. However, we have the authority to waive this requirement based on certain circumstances set forth in Section 608(c) of the Clean Water Act.

The Akron, Ohio project in question is part of a 2014 Combined Sewer Overflow (CSO) consent decree and consists of installing 6,000 feet of 27-foot diameter storage tunnel. No domestic steel fiber reinforcement is able to meet the project's technical

specifications. The City asserted, with supporting documentation and testing results, that the domestic fiber alternative would potentially compromise the structural integrity of the precast, segmental tunnel system. To date, this is the Agency's most extensively researched AIS waiver request. EPA staff verified that the material specification for the project is performance-based, visited the precast, segmental tunnel liner manufacturing facility (CSI-Hansen in Macedonia, OH) to independently verify the performance basis of the specifications, and conducted independent market research, in addition to conducting the required public notice comment period. We have been unable to find an AIS-compliant product that meets the project's technical specifications.

Please note that during public comment solicitation, EPA received significant comments from Helix Steel, a domestic manufacturer of steel fiber reinforcement. The attached draft waiver approval and internal memo address and respond to the Helix comments. The Governor's office in Ohio and Congressional Representatives in Ohio and Michigan were copied on Helix's comment submission.

I am recommending signature and approval of the waiver by Andrew Sawyers, Director of the Office of Wastewater Management (OWM). Please let me know if you have any concerns or would like additional information.

Thanks,

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Kime, Robin[Kime.Robin@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]
From: Schnare, David
Sent: Wed 3/1/2017 12:30:54 AM
Subject: Re:

There is no FR Notice. We are going out with a press release tomorrow and OAR will tell us how they will proceed with mailing to the 15,000 previous recipients.

Sent from my iPhone

On Feb 28, 2017, at 6:30 PM, Kime, Robin <Kime.Robin@epa.gov> wrote:

Hi
Checking.

Sent from my iPhone

On Feb 28, 2017, at 6:25 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Could one of you send me the notice of the ICR withdrawal for methane? Where is that in the process?

From: Schnare, David
Location: WJC-N 3415
Importance: Normal
Subject: Accepted: Hot Issues Check-in
Start Date/Time: Mon 3/13/2017 7:00:00 PM
End Date/Time: Mon 3/13/2017 7:30:00 PM

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Schnare, David
Sent: Mon 2/6/2017 8:37:29 PM
Subject: Fwd: according to twitter: Chicago EPA employees rally today against Pruitt

Kevin
Thoughts on use of EPA email to promote this lobbying?
dschnare

Sent from my iPhone

Begin forwarded message:

From: "Ericksen, Doug" <ericksen.doug@epa.gov>
Date: February 6, 2017 at 3:35:05 PM EST
To: "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Benton, Donald" <benton.donald@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Schnare, David" <schnare.david@epa.gov>
Subject: RE: according to twitter: Chicago EPA employees rally today against Pruitt

This is one that we will have to discuss today.

Ericksen

From: Grantham, Nancy
Sent: Monday, February 6, 2017 3:34 PM
To: Benton, Donald <benton.donald@epa.gov>; Ericksen, Doug <ericksen.doug@epa.gov>; Konkus, John <konkus.john@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: RE: according to twitter: Chicago EPA employees rally today against Pruitt

According to comms staff in the region – about 125 participants – many signs – fair amount of media.

Thanks ng

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

From: Grantham, Nancy

Sent: Monday, February 06, 2017 12:20 PM

To: Benton, Donald <benton.donald@epa.gov>; Ericksen, Doug <ericksen.doug@epa.gov>; Konkus, John <konkus.john@epa.gov>

Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>

Subject: according to twitter: Chicago EPA employees rally today against Pruitt

Called the regional comms folks and their understanding is this is a joint Sierra Club/AFGE rally

Nancy Grantham

Office of Public Affairs

US Environmental Protection Agency

202-564-6879 (desk)

202-253-7056 (mobile)

WLS-AM 890 Verified account
[@wlsam890](https://twitter.com/wlsam890)

Follow

More

Chicago EPA employees will urge the Senate to reject the nomination of Scott Pruitt as agency head at a rally today at Federal Plaza.

Christie St. Clair

Office of Public Affairs

Environmental Protection Agency

Washington, DC

o: 202-564-2880

m: 202-768-5780

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 12:48:55 PM
Subject: FW: Reminder: Larry Ishmael shared "ECONOMIC AND POLICY IMPLICATIONS OF HUMAN HEALTH EFFECTS FROM VEHICLE EMISSIONS IN CAPE TOWN.docx" with you

I don't know this person but perhaps Pruitt does.

From: Hope, Brian
Sent: Monday, March 13, 2017 8:43 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: FW: Reminder: Larry Ishmael shared "ECONOMIC AND POLICY IMPLICATIONS OF HUMAN HEALTH EFFECTS FROM VEHICLE EMISSIONS IN CAPE TOWN.docx" with you

From: Dropbox [<mailto:no-reply@dropboxmail.com>]
Sent: Monday, March 13, 2017 3:36 AM
To: Pruitt, Scott <Administrator's Email/Ex. 6>
Subject: Reminder: Larry Ishmael shared "ECONOMIC AND POLICY IMPLICATIONS OF HUMAN HEALTH EFFECTS FROM VEHICLE EMISSIONS IN CAPE TOWN.docx" with you

Hi there,

In case you missed it, Larry Ishmael (larry.ishmael@suasor.com) shared "ECONOMIC AND POLICY IMPLICATIONS OF HUMAN HEALTH EFFECTS FROM VEHICLE EMISSIONS IN CAPE TOWN.docx" with you on Dropbox.

Larry said:

"Director Pruitt, don't forget about me! I can help you cut back the EPA and debunk the CO2 economic model for anthropogenic climate change. I'm an Okie and 2 time US House from Washington 01 (ran against Jay Inslee). I'm also a friend of Tom Cole. Let me help! Meanwhile, here is my PhD dissertation that helps debunk anthropogenic climate change. I'm pulling for you! Professor Larry W Ishmael "

Thanks!
- The Dropbox Team

Want to stop getting invites from Dropbox? [Unsubscribe](#)
Dropbox, Inc., PO Box 77767, San Francisco, CA 94107

© 2017 Dropbox

To: Minoli, Kevin[Minoli.Kevin@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov];
Personal Email/Ex. 6 Byron Brown
From: Schnare, David
Sent: Thur 3/2/2017 10:25:34 PM
Subject: Executive Order on energy
Energy Independence EO Implementation.docx

Kevin and Sarah:

Based on our best understanding of what will be in the forthcoming Executive Order on Energy issues, the attached lists the EPA action items.

Deliberative Process Privilege/Ex. 5

Thanks,

dschnare

To: Brazauskas, Joseph[Joseph.Brazauskas@mail.house.gov]
From: Schnare, David
Sent: Wed 3/8/2017 3:36:25 PM
Subject: RE: SAB Reform and HONEST Act

Joe

I spoke with Speri from CBO and indicated that it was this Administration's policy to carry out the dictates of the HONEST act regardless of the passage of the Act, so costs should be irrelevant.

I also went over how we would only use those studies where the authors made the data available in a useful format, at no cost to us.

Bottom line, however, they are talking to SAB members and other EPA employees who are bad mouthing the process and raising all the same concerns that they have raised in the past. My response to that was to state rather clearly that the only person they were talking to that represented the position of the administration was me and that they should heavily discount those who will no doubt oppose the kind of institutional change that is going to be inevitable under this President.

dschnare

From: Brazauskas, Joseph [mailto:Joseph.Brazauskas@mail.house.gov]
Sent: Monday, March 6, 2017 6:25 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: SAB Reform and HONEST Act

David,

The two bills are attached, they should be introduced tomorrow.

Thanks,

Joe

Joseph A. Brazauskas

Staff Director and Senior Counsel

Subcommittee on Environment

Committee on Science, Space and Technology

Lamar Smith, Chairman

P: (202) 225-6371

From: Schnare, David
Location: 3233 WJCE
Importance: Normal
Subject: Accepted: Wetlands General Call in **Non-responsive Conference Code/Ex.6**
Start Date/Time: Wed 3/8/2017 4:00:00 PM
End Date/Time: Wed 3/8/2017 4:45:00 PM

From: Schnare, David
Location: Alm Conference Room
Importance: Normal
Subject: Accepted: Pebble Mine
Start Date/Time: Wed 3/8/2017 10:00:00 PM
End Date/Time: Wed 3/8/2017 10:45:00 PM

To: **Personal Email/Ex. 6**
From: Schnare, David
Sent: Mon 3/13/2017 12:29:02 PM
Subject: my earnings statement
dws-els-03 04 2017.pdf

David W. Schnare

Assistant Deputy Administrator

US. EPA

Environmental Protection Agency		For Pay Period Ending 03/04/2017	Net Pay
Earnings and Leave Statement		Pay Period # 06	Pay Date 03/14/2017
Name SCHNARE, DAVID W.	Pay Plan/Grade/Step ES 00 00	Annual Salary \$ 179,700.00	Hourly Rate \$ 86.10
Home Address Personal Matters/Ex. 6		Pay Check Address	
Basic Information Service Comp Date 01/20/2017 Dept ID EP Organization Code A0000000 TSP Tax Deferred Amt/%		Agency EPA Duty Station DC Pay Begin Date 02/19/2017	Cumulative Retirement Agency FLSA Class Financial Institution
Your Pay Consists of		Tax Information	Marital Exemptions Additional Current Wages YTD Wages
Current YTD		Status Withholding	
Personal Matters/Ex. 6		Personal Matters/Ex. 6	
EARNINGS			
Type	Rate	Adjusted	ADJ Hours Hours Current YTD
Personal Matters/Ex. 6			
DEDUCTIONS			
Type	Misc	Adjusted	Current YTD
Personal Matters/Ex. 6		Personal Matters/Ex. 6	
BENEFITS PAID BY GOVT.			
Type	Current	YTD	Type Current YTD
Personal Matters/Ex. 6		Personal Matters/Ex. 6	
LEAVE			
Type	Begin Bal Lv	Begin Bal Lv	Earned Earned YTD Used Current Used YTD Adv Ending Bal
Current Yr Current			
Personal Matters/Ex. 6			
ANNUAL LEAVE			
Category: 8	Projected Year End Balance:	8.00	Maximum Carry Over: 720.00 Use Or Lose Balance: 0
REMARKS			
RECOMP ADJUSTMENT PROCESSED THIS PAY PERIOD PREPARE AND FILE YOUR TAXES THE FAST, SAFE, AND FREE WAY: WWW.IRS.GOV/FREEFILE - AVAILABLE TO INDIVIDUALS WITH ADJUSTED GROSS INCOME LESS THAN \$64,000.00 REMARKS/MESSAGES: QUESTIONS? CALL HR/PAY HELPDESK 1-866-411-4372 OPT 2 OR EMAIL HRPAYHELP@EPA.GOV EMPLOYEE IS RESPONSIBLE FOR VERIFICATION OF PAY, DEDUCTIONS, AND LEAVE.			
THIS REPORT CONTAINS INFORMATION SUBJECT TO THE PRIVACY ACT OF 1974 AS AMENDED			

To: Dravis, Samantha[dravis.samantha@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]
From: Schnare, David
Sent: Mon 3/6/2017 5:10:31 PM
Subject: FW: Resending - EPA Request regarding Cholla
[removed.txt](#)
[Cholla NFRM prepublication version.docx](#)
[2017_0113 Cholla Final Action Fact Sheet.docx](#)

Samantha and Sarah:

Can you see whether this is still frozen or is it on the list we have now decided to released? If it is heading out the door, can you send Ms. Cagle a note as to its status.

d.

From: molly.cagle@bakerbotts.com [mailto:molly.cagle@bakerbotts.com]
Sent: Monday, March 6, 2017 12:07 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: jeffrey.allmon@pinnaclewest.com
Subject: Resending - EPA Request regarding Cholla
Importance: High

David,

First, thank you for your work on the Transition Team. I can't imagine how long your days are. Second, thank you for agreeing to take a look at this matter related to the Cholla Power Plant ("Cholla") in northern Arizona. The January 20th regulatory freeze has resulted in a hold being placed on the final rule containing the Best Available Retrofit Technology ("BART") reassessment for the Cholla facility, and without that reassessment, the owners will have to shut Cholla down in December 2017. The final rule cannot take effect unless and until it is published in the Federal Register. When the reassessment takes effect, the owners will have certainty as to the viability of existing contracts for the purchase of coal and can operate Cholla for many more years to come. Under the circumstances, you can

probably appreciate that the lingering uncertainty about the fate of the plant's BART reassessment is unnerving for the plant owners and its hundreds of employees. Given that EPA already has signed off on the environmental side of the Cholla BART reassessment, it seems clear that expeditiously allowing this rule to take effect is consistent with President Trump's repeated statements to preserve coal facilities and jobs in the USA.

Issue

On January 13, 2017, then U.S. EPA Administrator Gina McCarthy signed a final rule approving a source-specific SIP revision for the coal-fired Cholla plant near Winslow, Arizona (attached for reference). This action finalized a state BART determination for Cholla based upon a reassessment of circumstances surrounding future operation of the plant in compliance with the Regional Haze Rule (i.e., the "Cholla BART Reassessment"). Without this reassessment, Cholla would be required to install selective catalytic reduction ("SCR") controls on Units 3 and 4 on or before December 5, 2017 or cease operation, pursuant to a 2012 Regional Haze Federal Implementation Plan ("FIP"). At this time, the owners will NOT be able to install SCR controls at Cholla by the current deadline. Hence, if the 2017 Cholla BART Reassessment final rule is not allowed to take effect, this coal-fired facility will be required to close. In addition, further delays in formal publication of the 2017 final rule creates lingering regulatory uncertainty as to the future of the Cholla plant before the Arizona state utility commission.

Our Ask

Arizona Public Service Company ("APS"), (my client) as operating agent and co-owner of the Cholla facility, requests that U.S. EPA publish the 2017 federal rule, which approves the source- specific Regional Haze SIP for Cholla, in the Federal Register as soon as possible. Publication of the final rule is a necessary prerequisite for the rule to take effect.

Additional Facts

We are prepared to meet with you in DC or to set up a conference call to discuss

the details of the Cholla BART reassessment, but the “sum up” version of the story is:

- Beginning in 2008, APS undertook a project to voluntarily reduce emissions of NO_x, SO₂ and PM at Cholla through the installation and upgrade of Low NO_x Burners (“LNB”), SO₂ scrubbers, and baghouses for PM. In 2011, the Arizona Department of Environmental Quality (“ADEQ”) proposed the approval of these voluntary pollution control measures as BART for Cholla.
- On December 5, 2012, EPA promulgated a final action approving in part and disapproving in part a Regional Haze SIP submitted by ADEQ containing the Department’s 2010 BART determination. See 77 Fed. Reg. 72,512 (Dec. 5, 2012). The Agency identified what it believed were significant flaws in the way ADEQ identified BART for NO_x at Cholla. As such, EPA promulgated a FIP for Cholla imposing a far-lower NO_x emission limit (i.e., 0.055 lb/MMBTU)—which could only be achieved through installation of SCR controls—and required compliance by December 5, 2017.
- In order to avoid application of the 2012 EPA BART FIP for Cholla, which would have made continued operation of the plant uneconomical, Cholla’s owners committed to the following specific actions:
 - o Permanently close Cholla Unit 2 by April 1, 2016 (which has already occurred);
 - o Operate existing pollution controls at the plant; and
 - o By April 30, 2025, permanently cease coal burning at all Cholla units, with the option to convert the units to natural gas later that year (subject to a 20% capacity factor).
- Based on a state reassessment of BART requirements for Cholla that relied upon these commitments, on October 22, 2015, ADEQ submitted a revision to the Arizona Regional Haze SIP intended to replace the 2012 BART FIP.
- On January 13, 2017, U.S. EPA published a final rule approving the Arizona Regional Haze SIP revisions that included the Cholla BART Reassessment and withdrawing the 2012 FIP.

I am attaching a copy of EPA's final Fact Sheet for the Cholla BART Reassessment, and the rule, which is ready for publication in the Federal Register so that it may take effect.

Please let me know what additional information you need, or if we should meet with you or others within the Agency to talk further about our circumstances.

Best,

Molly Cagle

Molly Cagle

Partner

Baker Botts L.L.P.

Molly.cagle@bakerbotts.com

O +1.512.322.2535

M +1.512.423.8552

98 San Jacinto Blvd. #1500

Austin, Texas 78701

USA



Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

To: richardson@eelegal.org[richardson@eelegal.org]
From: Schnare, David
Sent: Mon 3/13/2017 11:30:41 AM
Subject: FW: Final Rule that Warrants Reconsideration - Steam Electric Effluent Limitations Guideline

Craig:

Who ever doesn't want this rule should be supportive.

d

From: Bromberg, Kevin L. [mailto:kevin.bromberg@sba.gov]
Sent: Wednesday, March 8, 2017 10:53 AM
To: Schnare, David <schnare.david@epa.gov>
Cc: Kreutzer, David <kreutzer.david@epa.gov>; Maresca, Charles A. <Charles.Maresca@sba.gov>
Subject: Final Rule that Warrants Reconsideration - Steam Electric Effluent Limitations Guideline

Dave – **Deliberative Process Privilege/Ex. 5**
Deliberative Process Privilege/Ex. 5

Dave K, I don't know if you're following this one.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

Advocacy Letter link:

[https://www.sba.gov/sites/default/files/Final%20SBA%20Advocacy%20Stream%20Electric%20%20Proposal%](https://www.sba.gov/sites/default/files/Final%20SBA%20Advocacy%20Stream%20Electric%20%20Proposal%20%20Final%20Draft%2012-12-12.pdf)


note : letter dated 9/9/12 – actually 9/9/13.

We can discuss this further as you move along.



Kevin


 Kevin Bromberg

Assistant Chief Counsel for Environmental Policy

 SBA // Office of Advocacy

409 3rd St. SW, Washington, D.C. 20416

 kevin.bromberg@sba.gov  202.481.2963

 Personal Phone/Ex. 6



To: Vanessa Leiby[Vanessa@WWEMA.org]
Cc: Anita Bermudez[anita@WWEMA.org]
From: Schnare, David
Sent: Wed 3/8/2017 2:00:09 PM
Subject: Re: Title to use for Washington Forum

Assistant

Sent from my iPhone

On Mar 8, 2017, at 8:59 AM, Vanessa Leiby <Vanessa@WWEMA.org> wrote:

Hi David – Sorry to bother you but I just want to confirm before we go to print which title you like us to use for the program, bio, etc. Assistant Deputy Administrator or Acting Deputy Administrator? Thanks! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: Personal Phone/Ex. 6

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

From: Schnare, David [<mailto:schnare.david@epa.gov>]

Sent: Tuesday, March 07, 2017 9:54 AM

To: Vanessa Leiby

Cc: Anita Bermudez

Subject: RE: Speaker Materials Request - WWEMA Washington Forum, March 22, 2017

Per your request:

David

From: Vanessa Leiby [<mailto:Vanessa@WWEMA.org>]

Sent: Monday, March 6, 2017 11:21 AM

To: Schnare, David <schnare.david@epa.gov>

Cc: Anita Bermudez <anita@WWEMA.org>

Subject: Speaker Materials Request - WWEMA Washington Forum, March 22, 2017

Importance: High

Good morning Dave. I suspect you have been extremely busy with the new administrator, budget issues, and getting the EPA house in order. As we are approaching the Washington Forum, would you have a moment to review the speaker request below and to complete and send me the attached speaker form. Please let me know if I can provide any further assistance. We are looking forward to hearing from you. Vanessa

1) Meeting Location and Time:

March 22, 2017

9:00 – 9:30 a.m.

The Westin Georgetown

2350 M Street, NW

Washington, DC 20037

2) Please complete the attached speaker registration form and return it to me by 3/1/17 at vanessa@wwema.org

3) Please submit a headshot and one paragraph bio that we can use for the program by 3/1/17 to vanessa@wwema.org

4) Please let me know if you would like me to make any edits to your presentation description in the program by 3/1/17.

5) If you plan to use a PowerPoint presentation, please submit an electronic copy to vanessa@wwema.org by 3/15/17.

Thanks again and I look forward to working with you and the new Administration! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: Personal Phone/Ex. 6

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

From: Vanessa Leiby

Sent: Tuesday, February 14, 2017 10:48 AM

To: 'schnare.david@epa.gov'

Cc: Anita Bermudez

Subject: Confirmation to Speak at WWEMA Washington Forum, March 22, 2017

Importance: High

Hi Dave – it was great to hear your voice and briefly catch up this morning! I am very pleased that you will be able to speak at our 44th WWEMA Washington Forum on Wednesday, March 22. Please see the attached Preliminary Agenda for information about the timing of your presentation and other meeting and hotel logistics. I have not yet formally assigned timeslots but the session will run from 9:00 – 10:30 a.m. I would be honored if you would be able to open our meeting. Please see logistics and additional information requests, below:

1) Meeting Location and Time:

March 22, 2017

9:00 – 9:30 a.m.

The Westin Georgetown

2350 M Street, NW

Washington, DC 20037

2) Please complete the attached speaker registration form and return it to me by 3/1/17 at vanessa@wwema.org

- 3) Please submit a headshot and one paragraph bio that we can use for the program by 3/1/17 to vanessa@wwema.org
- 4) Please let me know if you would like me to make any edits to your presentation description in the program by 3/1/17.
- 5) If you plan to use a PowerPoint presentation, please submit an electronic copy to vanessa@wwema.org by 3/15/17.

Thanks again and I look forward to working with you and the new Administration! Vanessa

Vanessa M. Leiby

Executive Director

Water and Wastewater Equipment Manufacturers Association

540 Fort Evans Road, #304

Leesburg, VA 20176-3379

Phone: 703-444-1777

Mobile: Personal Phone/Ex. 6

vanessa@wwema.org

www.wwema.org

MARK YOUR CALENDAR

44th Washington Forum

March 21-23, 2017

The Westin Georgetown

Washington, DC 20037

Finance & Contract Administration Council

May 17-18, 2017

Law Offices of Barnes and Thornburg LLP

Chicago, IL 60606

109th Annual Meeting

November 8-10, 2017

Omni Scottsdale Resort and Spa at Montelucia

Scottsdale, AZ 85253

To: Benton, Donald[benton.donald@epa.gov]
From: Schnare, David
Sent: Mon 3/13/2017 1:19:56 AM
Subject: Something is up

Call me. 5 Personal Phone/Ex. 6

d

Sent from my iPhone

To: Kaplan, Robert[kaplan.robert@epa.gov]
From: Schnare, David
Sent: Thur 3/2/2017 9:19:39 PM
Subject: Re: Update on EPA's Budget

Thx

Sent from my iPhone

On Mar 2, 2017, at 4:17 PM, Kaplan, Robert <kaplan.robert@epa.gov> wrote:

David,

Here is the email I sent to Region 5. I received some good feedback on it. As you might imagine, there is substantial anxiety. Just knowing the process will help a lot.

- Bob

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Cell: Personal Phone/Ex. 6

Direct: 312-886-1499

Main: 312- 886-3000

From: Kaplan, Robert
Sent: Thursday, March 02, 2017 3:15 PM
Subject: Update on EPA's Budget

Colleagues,

As discussed at the Region 5 All-Hands meeting on January 31, I want to provide you with as much information as I can in these challenging times. With that in mind, I write to provide you with important information about the 2017 and 2018 budgets.

2017. For this year, we are currently under a continuing resolution (CR) through April 28, 2017. The CR funds the government at approximately last year's levels. In effect, this means that whatever we had last year in terms of funding levels have continued on into the first part of 2017. We depend on Congress to fund the government by April 28 through the rest of the fiscal year. To state the obvious, it is not possible to predict what those funding levels will be. In years past, Congress did not make substantial cuts because of the difficulty in implementing such a budget with only a relatively short time before the end of the fiscal year. As always, we are managing our resources -- including payroll and travel -- prudently to prepare for the range of possible outcomes.

2018. You have likely seen news reports about the President's 2018 federal budget. These reports are of concern to all of us, and are causing considerable stress and anxiety. I want to make two points.

First, a word about process. I want to put a "you-are-here" pin on the map. We are at the *start* of a longer budget process for next year that involves many steps. This phase is referred to as "passback," because it's when the Office of Management and Budget "passes back" drafts of proposed budgets for the next fiscal year to agencies. It begins a series of negotiations in advance of a final proposal for the President's 2018 Budget. The next major step will occur on March 16th, when OMB is scheduled to release a "Budget Blueprint" that will outline the total dollars and Full Time Employees for EPA. This will be followed in early May by an even more detailed budget. At that point, the proposed budget gets submitted to Congress. House and Senate subcommittee hearings will then consider that proposal and begin working on -- and debating -- appropriations bills for specific parts of the government, including EPA. Once passed by Congress, and signed by the President, appropriations bills then enact federal agency budgets into law. It is only then that we know what our final budget numbers will be. Let me again state the obvious: at this point, we do not know what will appear in the President's 2018 final budget proposal, and we do not know what will happen upon consideration by Congressional House and Senate Subcommittees. It is a process with many likely changes before a final appropriations bill is passed.

Second, I have been assured that Administrator Pruitt will work hard on our behalf to effectively represent EPA in the budget deliberations. Region 5 along with the other regions and headquarters components are providing important information to support his ability to do so. I know that this information will be useful as EPA and OMB engage in continuing discussions.

Closing thoughts. Region 5 will have another All-hands at the end of March, as we said at the last meeting. Before that time, we will continue to provide you with information through the intranet site and the “Breakfast Club” meetings. It is difficult not to get swept up in the swirl of media. These are uncertain times. What I know is this: we have critical work to do on behalf of the American people. We protect human health and the environment. As I said on January 31, we do it better than anyone. Please know that I will do everything I can to support you, just as I know you will continue to carry out our outstanding work.

Thank you.

- Bob

Robert Kaplan

Acting Regional Administrator

EPA Region 5 – Chicago

Cell: Personal Matters/Ex. 6

Direct: 312-886-1499

Main: 312- 886-3000

From: Schnare, David
Location: WJC-N 3415
Importance: Normal
Subject: Accepted: Hot Issues Check-in
Start Date/Time: Mon 3/6/2017 9:00:00 PM
End Date/Time: Mon 3/6/2017 9:30:00 PM

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Schnare, David
Sent: Sun 3/12/2017 11:33:29 PM
Subject: Re:

Call me now. **Personal Matters/Ex. 6**

Sent from my iPhone

On Mar 12, 2017, at 7:30 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

David, I need to talk to you about a matter in the morning. In the meantime, can you hang back from attending the 8am meeting?

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

Ex. 6

From: Schnare, David
Location: 3513A
Importance: Normal
Subject: Accepted: EPA Gathering Location for the 2:00 p.m. Reg Review Call
Start Date/Time: Fri 3/3/2017 7:00:00 PM
End Date/Time: Fri 3/3/2017 8:00:00 PM

To: Hull, George[Hull.George@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]
From: Schnare, David
Sent: Sun 3/12/2017 1:24:01 PM
Subject: Fwd: CAFE discussion draft: joint DOT-EPA draft notice TALKERS

FYI
dschnare

Sent from my iPhone

Begin forwarded message:

From: "McInerney, Marianne (OST)" <marianne.mcinerney@dot.gov>
Date: March 11, 2017 at 4:32:52 PM EST
To: "Konkus, John" <konkus.john@epa.gov>
Cc: "schnare.david@epa.gov" <schnare.david@epa.gov>, "Kaelan.K.Dorr" <Kaelan.K.Dorr@EOP/Ex. 6>, "Moore, Allison (OST)" <A.Moore@dot.gov>, "Bradley.A.Rateike" <Bradley.A.Rateike@EOP/Ex. 6>
Subject: RE: CAFE discussion draft: joint DOT-EPA draft notice TALKERS

John and Dave

I wanted to be sure that you received the draft talkers yesterday. Please let me know if you want to discuss over the weekend.

Thank you
Marianne

Marianne McInerney
Office of the Secretary
U.S. Department of Transportation
Mobile: Ex. 6

-----Original Message-----

From: McInerney, Marianne (OST)
Sent: Friday, March 10, 2017 4:55 PM
To: 'Konkus, John'
Cc: 'schnare.david@epa.gov'; Kaelan.K.Dorr@EOP/Ex. 6; Moore, Allison (OST); Bradley.A.Rateike@EOP/Ex. 6
Subject: CAFE discussion draft: joint DOT-EPA draft notice TALKERS

Please see attached for discussion and use.

Marianne McInerney

Office of the Secretary
U.S. Department of Transportation
Mobile: **Ex. 6**

To: Flynn, Mike[Flynn.Mike@epa.gov]
From: Schnare, David
Sent: Wed 3/8/2017 3:41:24 AM
Subject: Fwd: Chlorpyrifos One-Pager
[image002.png](#)
[ATT00001.htm](#)
[Revised Chlorpyrifos Revocation Questions March 7 final.docx](#)
[ATT00002.htm](#)

Deliberative Process Privilege/Ex. 5

d

Sent from my iPhone

Begin forwarded message:

From: "Schnare, David" <schnare.david@epa.gov>
Date: March 7, 2017 at 10:28:41 PM EST
To: "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Cleland-Hamnett, Wendy" <Cleland-Hamnett.Wendy@epa.gov>
Cc: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Dravis, Samantha" <dravis.samantha@epa.gov>, "Brown, Byron" <brown.byron@epa.gov>
Subject: Fwd: Chlorpyrifos One-Pager

Deliberative Process Privilege/Ex. 5

dschnare

Sent from my iPhone

Begin forwarded message:

From: "Dravis, Samantha" <dravis.samantha@epa.gov>
Date: March 7, 2017 at 5:51:27 PM EST
To: "Schnare, David" <schnare.david@epa.gov>, "Brown, Byron" <brown.byron@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>
Subject: FW: Chlorpyrifos One-Pager

Making sure the three of you had this as well.

From: Schwab, Justin
Sent: Tuesday, March 7, 2017 4:04 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Fwd: Chlorpyrifos One-Pager

See attached, Deliberative Process Privilege/Ex. 5

Sent from my iPhone

Begin forwarded message:

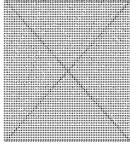
From: "Vaden, Stephen - OGC" <Stephen.Vaden@ogc.usda.gov>
Date: March 7, 2017 at 11:02:30 AM EST
To: "schwab.justin@epa.gov" <schwab.justin@epa.gov>
Subject: Chlorpyrifos One-Pager

Justin,

Attached, please find a brief document outlining Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5 As always, I am happy to discuss any of the points or put your staff in contact with our wonderful career people. They and I are willing to assist you in any way.

Stephen



Stephen Alexander Vaden

U.S. Department of Agriculture

Office of the General Counsel

**Senior Adviser to the Office of General
Counsel**

Whitten Building, Suite 107W

' 202-720-3351 (Voice)

202-720-8666 (Fax)

 stephen.vaden@ogc.usda.gov

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

From: Schnare, David
Location: Call-in
Importance: Normal
Subject: Accepted: EPA Reg Review Call
Start Date/Time: Fri 3/3/2017 7:00:00 PM
End Date/Time: Fri 3/3/2017 8:00:00 PM

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
Cc: Fugh, Justina[Fugh.Justina@epa.gov]
From: Schnare, David
Sent: Mon 3/6/2017 3:05:44 PM
Subject: Re: Need to know this morning: David and the CWRule Litigation

Neither FME Law nor E&E Legal filed on WOTUS

dschnare

Sent from my iPhone

> On Mar 6, 2017, at 9:39 AM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:
>
> David and Justina- Can you please remind me whether David is recused from the litigation over the
Clean Water Rule? Thanks. Kevin
>
> Kevin S. Minoli
> Acting General Counsel
> Office of General Counsel
> US Environmental Protection Agency
> Main Office Line: 202-564-8040

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]
From: Schnare, David
Sent: Fri 3/10/2017 10:55:09 PM
Subject: Re:

I'll call my dentist and see what he says.

d

Sent from my iPhone

On Mar 10, 2017, at 5:53 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

The dentist thing is frustrating. SP doesn't have her cell phone number. The office is closed Friday and also works limited hours Monday. I haven't been able to reach her and the earliest at this point I can try again is on Monday.

Please Advise: do you want to go forward anyway without having consulted with her?

To: Shapiro, Mike[Shapiro.Mike@epa.gov]
From: Schnare, David
Sent: Thur 3/2/2017 7:26:21 PM
Subject: FW: Petition to EPA for Reconsideration of the HHWQS Rule for Washington State
removed.txt
2017-02-15 WTR Petition for Rulemaking FINAL.pdf

Fyi

d

From: Benton, Donald
Sent: Thursday, March 2, 2017 2:22 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Schnare, David <schnare.david@epa.gov>
Subject: FW: Petition to EPA for Reconsideration of the HHWQS Rule for Washington State

Another petition on WA water Quality Standards

Don

Senator Don Benton

Senior White House Advisor

Office of the Administrator

202.564.4711



From: Chris McCabe [<mailto:chris@nwpulpandpaper.org>]
Sent: Thursday, March 2, 2017 12:55 PM
To: Benton, Donald <benton.donald@epa.gov>

Subject: Petition to EPA for Reconsideration of the HHWQS Rule for Washington State

Dear Mr. Benton:

For your information, please find attached a Petition for Reconsideration of the EPA Washington human health water quality standards (HHWQS) rule. This Petition was filed with the EPA headquarters Docket Center on February 21, 2017. A CD with the supporting footnote documentation was sent via regular mail under separate cover.

And please recall that this same issue is currently pending in Idaho and Maine, where NWPPA member mills also have facilities.

Please contact me at the numbers below with any questions.

Thank you,

Chris McCabe

Christian M. McCabe, J.D.

Executive Director

Northwest Pulp & Paper Association

212 Union Ave. SE, Suite 103

Olympia, WA 98501

(360) 529-8638 (work)

(360) 951-1306 (mobile)

www.nwpulpandpaper.org



Please note: It's okay to print this e-mail. Paper is a plentiful, biodegradable, renewable, recyclable, sustainable product made from trees that supports our economy by providing jobs and income for millions of Americans. Working forests are good for the environment and provide clean air and water, wildlife habitat and carbon storage. Thanks to improved forest management, we have more trees in America today than we had 100 years ago.

To: Hull, George[Hull.George@epa.gov]
From: Schnare, David
Sent: Thur 3/2/2017 7:20:23 PM
Subject: Re: 3:30 pm Meeting

See you then

Sent from my iPhone

On Mar 2, 2017, at 1:22 PM, Hull, George <Hull.George@epa.gov> wrote:

David,

I just had a brief conversation with John Konkus about some updates we wanted to suggest for the EPA Home Page. John thought you should see them. If you are comfortable with my joining the 3:30 meeting, I could bring them to show you. - George

Cc: Konkus, John[konkus.john@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]
To: Hull, George[Hull.George@epa.gov]
From: Schnare, David
Sent: Mon 3/6/2017 2:57:03 PM
Subject: Re: MTE Reconsideration Comms Materials

Go ahead and share with DOT.

Sent from my iPhone

> On Mar 3, 2017, at 6:53 PM, Hull, George <Hull.George@epa.gov> wrote:
>
> David,
>
> Please find attached the Draft Communications Plan, Press Release and Q+A documents for the joint EPA/DOT announcement of our intention to reconsider the Mid-Term Evaluation of Corporate Average Fuel Economy (CAFE) standards for light duty vehicles. Also attached are three letters from the auto sector to the President regarding their concerns with the existing CAFE standards. As you may note, the Administrator's quote in the press release will need some additional attention before we can make it final.
>
> We would like to share these draft materials with the contacts you gave us in DOT's Public Affairs in order to coordinate for a Monday announcement. Please let us know if you have any concerns with our sending the documents, or if there are any additional edits/revisions you would like us to make before sharing with DOT. Thanks, George
> <MTE Reconsideration Comms Plan.docx>
> <GHG Draft Release 3.2.17 (003).docx>
> <MTE-Q-A-DRAFT 03-03-17.docx>
> <CA1078111110.pdf>
> <document_gw_13.pdf>
> <Letter-to-EPA-Admin.-Pruitt-Feb.-21-2016-Signed.pdf>

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]
From: Schnare, David
Sent: Fri 3/10/2017 10:01:27 PM
Subject: Cantanzaro call

Mike called me.

Deliberative Process Privilege/Ex. 5

Deliberative Process Privilege/Ex. 5

d.

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]
From: Schnare, David
Sent: Fri 3/10/2017 9:54:03 PM
Subject: RE:

Sam, if the dentist said he was aware of and ok with the rule, we probably need to get the matter over to OFR.

d.

From: Jackson, Ryan
Sent: Thursday, March 9, 2017 9:24 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE:

I believe she did the homework on this. Attached is some background which I thought would be helpful.

From: Schnare, David
Sent: Thursday, March 9, 2017 9:20 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Re:

I don't know what Sam has found out so it hasn't been greenlighted yet.

Sent from my iPhone

On Mar 9, 2017, at 9:17 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Did we officially give the green light to the dental regulation so we can get that out the door?

Ryan Jackson

Chief of Staff

U.S. Environmental Protection Agency

(202) 564-6999

To: Rees, Sarah[rees.sarah@epa.gov]
From: Schnare, David
Sent: Thur 3/2/2017 5:27:42 PM
Subject: RE: 114 Notice - Tic Tic Tic

super

From: Rees, Sarah
Sent: Thursday, March 2, 2017 12:25 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: Re: 114 Notice - Tic Tic Tic

We have it and it will go on time.

On Mar 2, 2017, at 12:23 PM, Schnare, David <schnare.david@epa.gov> wrote:

To: Minoli, Kevin[Minoli.Kevin@epa.gov]
From: Schnare, David
Sent: Mon 2/13/2017 2:06:04 PM
Subject: RE: Pruitt request - update on deadlines

thx

From: Minoli, Kevin
Sent: Monday, February 13, 2017 9:03 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: Re: Pruitt request - update on deadlines

I've asked folks to run it already, so it should be today.

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Feb 13, 2017, at 8:54 AM, Schnare, David <schnare.david@epa.gov> wrote:

Thanks, please do. When can I get it?

d.

From: Minoli, Kevin
Sent: Monday, February 13, 2017 8:54 AM
To: Schnare, David <schnare.david@epa.gov>
Subject: Re: Pruitt request - update on deadlines

Hi David- This is our litigation deadlines chart. We can generate an updated version of it for folks. Kevin

Kevin S. Minoli
Acting General Counsel

Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Feb 13, 2017, at 7:40 AM, Schnare, David <schnare.david@epa.gov> wrote:

Kevin:

I'm not sure where the attached came from or why it was put together, but Scott Pruitt has seen it and wants it update so that he can read it before he is sworn in. Can we get this updated by COB Tuesday? (Monday would be even better.)

Dschnare

<OGC Deadlines 12-19-2016.pdf>

To: Smith, Loren (OST)[Loren.Smith@dot.gov]
From: Schnare, David
Sent: Wed 3/15/2017 6:25:09 PM
Subject: RE: CAFE on track?

Personal Matters/Ex. 6

-----Original Message-----

From: Smith, Loren (OST) [mailto:Loren.Smith@dot.gov]
Sent: Wednesday, March 15, 2017 2:16 PM
To: Schnare, David <schnare.david@epa.gov>
Subject: Re: CAFE on track?

Dangit.

Pls confirm to me your personal info.

I'm at **Personal Email/Ex. 6** and **Personal Phone/Ex. 6** and still reachable at this email and **Personal Phone/Ex. 6**

Sent from my iPhone

On Mar 15, 2017, at 2:13 PM, Schnare, David <schnare.david@epa.gov> wrote:

As I am resigning effective this Friday, **Ex. 6** commencing in 20 minutes, it will be necessary for you to work with others here at EPA.

Please work with Ryan Jackson.

My compliments to you all who pushed this matter to initial completion.
David Schnare

-----Original Message-----

From: Catanzaro, Michael J. EOP/WHO [mailto:**EOP/Ex. 6**]
Sent: Wednesday, March 15, 2017 2:08 PM
To: Smith, Ja'Ron K. EOP/WHO <**EOP/Ex. 6**>
Cc: Smith, Loren (OST) <Loren.Smith@dot.gov>; Schnare, David <schnare.david@epa.gov>; McCown, Brigham (OST) <brigham.mccown@dot.gov>
Subject: Re: CAFE on track?

Thanks all. How does this Friday look?

Sent from my iPhone

> On Mar 15, 2017, at 2:07 PM, Smith, Ja'Ron K. EOP/WHO **EOP/Ex. 6** wrote:

>

> Agreed

>

> Sent from my iPhone

>

>> On Mar 15, 2017, at 2:02 PM, Smith, Loren (OST) <Loren.Smith@dot.gov> wrote:

>>

>> Thank you, gentlemen.

>>

>> Should we have another call soon to discuss next steps?

>>

>> +++
>> Loren Smith
>> U.S. Department of Transportation
>> West Building - W85-115
>> loren.smith@dot.gov
>> Personal Phone/Ex. 6
>>
>>
>> -----Original Message-----
>> From: Moore, Allison (OST)
>> Sent: Wednesday, March 15, 2017 11:53 AM
>> To: Smith, Loren (OST)
>> Subject: FW: EMBARGOED Background Briefing on CAFE Standards
>>
>>
>>
>>
>> _____
>> Embargoed Until 5:00 a.m. EDT, March 15, 2017
>>
>>
>> BACKGROUND BRIEFING
>> BY SENIOR ADMINISTRATION OFFICIALS
>> ON CAFE STANDARDS
>>
>> James S. Brady Press Briefing Room
>>
>>
>>
>>
>> 6:04 P.M. EDT
>>
>>
>>
>> SENIOR ADMINISTRATION OFFICIAL: This announcement is very simple, very straightforward.
The President is traveling tomorrow to Detroit, Michigan to make an announcement on CAFE greenhouse
gas emissions standards for the auto sector.
>>
>>
>>
>> You guys recall, back in 2012, the Obama administration constructed what they called one single
national program for CAFE and greenhouse gas emissions standards. And the reason they did that, it
was proven at the time -- the reason they did that is because under the CAFE statute, the Department of
Transportation, through NHTSA, which is the National Highway Traffic Safety Administration, was
regulating CAFE. But because of the Supreme Court decision, EPA, under the Clean Air Act, got into the
business of regulating greenhouse gas emissions from tailpipes.
>>
>>
>>
>> And because the Clean Air Act was involved, the state of California also had equities as well, because
under the Clean Air Act Section 209, California can actually get a waiver from the federal government to
regulate emissions that are stricter than what are set at the federal level.
>>
>>
>>
>> So the auto industry said, wait a minute, we have three different regulatory bodies here, we need to

figure this out. The Obama administration came together and said let's have one program, so they did that. But as part of the agreement, the auto industry said, well, if we're going to be looking at standards a decade or 10 years from now, I think it was -- because this was 2012 -- the Obama administration really wanted to go very aggressive, very hard -- again, it was way out in the future. So the industry said, we'll accept that so long as we can do a midterm review in 2018 to make sure that the data in front of us is current, to make sure that we understand what the market realities are, to make sure we understand what the technology looks like because it's 2012 now and, again, we're looking out way into the future, we've never done this before. They actually signed letters that they put into the record -- the auto CEOs -- basically saying, we pledge we'll abide by this agreement as long as you, federal government, do the same.

>>

>>

>>

>> So, lo and behold, last year, in July, the Obama administration put out a draft technical assessment report way earlier than they were supposed to. And the industry was very concerned about that because it was way shorter than the 2018 timeframe.

>>

>>

>>

>> But in the fall, the Obama administration said, don't worry about it, we're not going to finalize anything before this administration is over; just wait, we're continuing along the glide path here. So the industry was reassured. But, again, right after the election, the administration made very clear that they were going to abrogate, break the agreement -- which they did. They issued -- EPA, that is -- issued a final determination on January 12th, basically saying that the industry was able to meet these later-term standards, from 2022 to 2025, for greenhouse gas emissions and for CAFE.

>>

>>

>>

>> The auto industry rightly cried foul, and said, wait a minute, we're supposed to do this in 2018. You guys didn't do this in collaboration with us. You certainly didn't do it in collaboration with NHTSA, which, again, has equities here because we're talking about fuel economy and CO2 emissions out of tailpipes. That's how you measure fuel economy, so they need to be doing this together.

>>

>>

>>

>> So essentially what we're going to announce -- the President is going to announce tomorrow is, hey, we're going to get this agreement back on track, this midterm review, as it's called. We're going to pull back the EPA's determination because we don't think it's right, and we're going to spend another year looking at the data in front of us and making sure everything is right so that when we come to 2018, we can set standards that are technologically feasible, economically feasible, to allow the auto industry to continue to grow and create jobs, which is very important to the President.

>>

>>

>>

>> So that's basically it. That's all that's going to happen tomorrow, is that announcement.

>>

>>

>>

>> Q So do you have a sense, based on the data so far and the technology, that standards agreed to are reachable? Or are there ripples in the data or technology that suggest they might not be reachable and they might be -- you'll have to pull them back permanently?

>>

>>

>>

>> SENIOR ADMINISTRATION OFFICIAL: Don't know that yet. But, yeah, I mean, the indications are right now -- if you look at the vehicle fleet, it's like 96.5 percent of the vehicle fleet is conventional

powertrains -- about 3.5 percent, you're looking at plug-in hydroelectric vehicles, battery-powered vehicles. So we're nowhere near reaching the standards from 2022 to 2025.

>>

>>

>>

>> And EPA, I think in their final determination -- the auto industry was very upset because basically they said, hey, don't worry, you'll be able to meet these standards just with conventional powertrains. And the industry is saying, no way, we're going to have to have a lot more penetration of electric and plug-in hydroelectric vehicles. And the fact of the matter is, because we have low gas prices, and probably will for some time, consumers just aren't buying those vehicles. There's nothing wrong with those vehicles. They're fine, they're great. But consumers just aren't buying them. So that's a big problem. So if that continues, then we'll have to recalibrate.

>>

>>

>>

>> Q Can you just walk us through the technical details of exactly what has to happen? I mean, is it Pruitt stands up there, the President stand up there? And does anything need to be signed? What actually needs to happen in order to get this process on track?

>>

>>

>>

>> SENIOR ADMINISTRATION OFFICIAL: That's a good question. The EPA put out a final determination, but they didn't put it in the Federal Register, so it's a non-final rule. It actually got caught in the ambit of the previous memo, so it was frozen. Because it was not published in the Federal Register, EPA can just pull it back without having to do notice of comment, which is what they're going to do. There's actually plenty of court precedent to back up EPA not having to go through an EPA notice of comment process.

>>

>> Q Do you know when that's going to happen?

>>

>> SENIOR ADMINISTRATION OFFICIAL: What's that?

>>

>> Q When is that going to happen, do you know?

>>

>> SENIOR ADMINISTRATION OFFICIAL: That will happen -- the announcement tomorrow, jointly EPA.

>>

>> Q -- with the Federal Register.

>>

>> SENIOR ADMINISTRATION OFFICIAL: Correct, tomorrow. That will happen tomorrow.

>>

>> Q There's also been some talk -- and I'm sorry, this is not something I cover regularly -- but there's been some talk about potentially prohibiting states like California from setting their own high fuel standards. Is that part of the conversation right now? Is that part of this?

>>

>> SENIOR ADMINISTRATION OFFICIAL: Well, California already has a waiver that was granted to them under the Clean Air Act. So if the 2018 -- that's way in the future. I mean, 2018 comes around, we're going to have to work with California to figure it out because they already have that waiver to go beyond federal standards.

>>

>> Q And that doesn't change?

>>

>> SENIOR ADMINISTRATION OFFICIAL: That will not change with this midterm review.

>>

>> Q But is the idea of pulling back that waiver under consideration?

>>

>> SENIOR ADMINISTRATION OFFICIAL: Not right now, no.

>>

>> Q That was my question, whether you're going to withdraw that waiver.

>>

>> Q So how do you address where California's policy already is, where that's essentially forcing zero-emission vehicles into the fleet now? Is there a reason why you should decouple what the national policy would be from what California is doing, given how many vehicles you're talking about in a state that size?

>>

>> SENIOR ADMINISTRATION OFFICIAL: Well, that decoupling is something you're going to have to figure out when you get to the midterm review. That's just not something we're going to be doing right now.

>>

>> Q But in other words, has the horse left the barn on electric power trains? If California is already really forcing them into --

>>

>> SENIOR ADMINISTRATION OFFICIAL: No, I don't think so. The numbers just don't add up. Consumers just don't -- they may be making them in California, but overall I think the industry is very concerned because consumers are not going to buy those vehicles if you have gas prices at two bucks. That's just not going to happen.

>>

>> Q I'm getting fed information here. So does that mean that automakers would have to make different cars for different states to meet California's standard in California? So you're going to have two standards here then?

>>

>> SENIOR ADMINISTRATION OFFICIAL: Well, I mean, again, this is all in the future, so we're getting way ahead of ourselves. But it's not just California. There are other states. It's like Section 177 Clean Air. Other states can follow California. So 13 other states have said they will follow California. So you're talking about 40 percent of the auto market, so it can't be ignored.

>>

>> So the hope is that as you go through this process, California will be a partner, and we'll figure this out. So that's an issue we're going to have to confront. But that's much farther down the road. I don't want to get too ahead of ourselves because that's not what we're talking about.

>>

>> Q I know, but we're not wrong to wonder about that.

>>

>> SENIOR ADMINISTRATION OFFICIAL: Sure, you can wonder about it.

>>

>> Q That confrontation is going to come.

>>

>> SENIOR ADMINISTRATION OFFICIAL: It may or it may not. We welcome California to the table. Let's keep talking and figure this out. If, at that point, California decides they want to go in a different direction, or we decide we go in a different direction, we'll have to deal with it at that point. But that's further down the road.

>>

>> Q And the direction California would have to go in is to be less aggressive on clean air standards, right?

>>

>> SENIOR ADMINISTRATION OFFICIAL: If that's -- I don't know. I'm not prejudging the outcome. I think everybody is assuming that because we're getting the midterm review back on track, that necessarily we're going to roll back the later standards. I don't think anybody is saying that. I think the industry is looking at them and saying they're aggressive. I don't think we are saying that we are going to pull them back. We're not saying that. Let's just do the review that was originally agreed to. That's what we're saying.

>>

>> Q And you'd be looking at the same data that EPA already looked at? Or is there a new --

>>

>> SENIOR ADMINISTRATION OFFICIAL: Part of it. Yeah, I would just assume that over the next 12 months there will be additional data you'd want to look at.

>>

>> Q I guess I'm asking is it the same set of data, or is there a new source that -- do you think there's a data area that they didn't look at when they made their determination?

>>

>> SENIOR ADMINISTRATION OFFICIAL: There's a voluminous record of data that I think EPA ignored. So I think it's all before us, and I think we'll look at it.

>>

>> Q What kind of data?

>>

>> SENIOR ADMINISTRATION OFFICIAL: Again, go read the Auto Alliance testimony. I think it's actually pretty comprehensive in terms of them outlining the fact that -- well, first of all, the process was very short-circuited. I don't think the public really had an opportunity to weigh in on the determination that EPA made. They sort of shoved it down their throats in December. They short-circuited the review period significantly. So I think the industry and public commenters didn't have a lot of time to put together their comments. But nonetheless, there was a lot of data that was submitted. And I think it's a fair point to say that the Obama EPA just ignored it.

>>

>> Q Do you envisage any impact on American car manufacturers exporting to Japanese or European markets if they have a longer time horizon to meet higher --

>>

>> SENIOR ADMINISTRATION OFFICIAL: I can't answer that question.

>>

>> Q You didn't look into it?

>>

>> SENIOR ADMINISTRATION OFFICIAL: I haven't looked into it, no.

>>

>> Q If the President is going to use this event tomorrow to describe his ambition to help manufacturing and the U.S. auto market, but what he's announcing is just another year of review, can you explain what the President's view is about how that review will help the U.S. auto manufacturing sector?

>>

>> SENIOR ADMINISTRATION OFFICIAL: Yeah, I mean, you want to make sure that -- this is a huge deal. You're talking about from 2012 to 2015 in industry -- no, this is actually not industry. EPA estimated a \$200 billion cost. EPA estimated that. So you want to make sure you get this right. And I think that's what the President is looking at and saying, wait a minute, you're short-circuiting a review of a regulation that's going to cost \$200 billion over a decade for an important industry to the United States -- let's get it right. That's what he's talking about.

>>

>> Q Is he going to overtly side with any data from the automakers themselves?

>>

>> SENIOR ADMINISTRATION OFFICIAL: Not tomorrow, no.

>>

>> Q No. And can I ask one other follow-up? How does the administration believe that this review might impact the technological innovations, such as electric cars or non-fuel-driven cars, and the future of those vehicles?

>>

>> SENIOR ADMINISTRATION OFFICIAL: Again, as I said, I mean, I think a lot of this is driven by consumer demand. So if you have persistently low gas prices, consumers are making up their minds about the cars they want to buy. So that's what you have to look to. It's not looking necessarily to us or the auto industry, it's what the consumer wants.

>>

>> Q Is the EPA going to continue taking the lead on this, or is the White House looking for NHTSA to take a more active role?

>>

>> SENIOR ADMINISTRATION OFFICIAL: Yeah, I think that's -- absolutely. One of the concerns was

that EPA, when they put out their proposed determination late last year, NHTSA was really not part of the process -- not consulted rigorously. And given NHTSA sets fuel economy, I think you'll see, when you read tomorrow in the joint announcement, that NHTSA is going to be a partner -- much more of a partner than they were with, I think, the previous EPA in setting standards.

>>

>> Q You mentioned that this got caught up in the previous memo, and there was no (inaudible.) Were there other similar -- other (inaudible) or findings that were caught up in that brief window that you have found out that we should be expecting announcements on in the coming days or weeks?

>>

>> SENIOR ADMINISTRATION OFFICIAL: Not that I'm aware of.

>>

>> Q This is the one exception?

>>

>> SENIOR ADMINISTRATION OFFICIAL: I don't know -- don't know that.

>>

>> Q Just one other one. Is the review still going to solely focus on the 2025 period?

>>

>> SENIOR ADMINISTRATION OFFICIAL: 2022 to 2025?

>>

>> Q Yeah, 2022 to 2025 period, or could it affect earlier years?

>>

>> SENIOR ADMINISTRATION OFFICIAL: No, that's the period that we're looking at.

>>

>> Q One other follow-up to the idea of maybe transitioning more responsibility to NHTSA. Are we going to look at the President's budget numbers and see any recommended defunding of elements inside EPA that would be responsible for this?

>>

>> SENIOR ADMINISTRATION OFFICIAL: That's an OMB question --

>>

>> SENIOR ADMINISTRATION OFFICIAL: Yeah, I don't have the data on that.

>>

>> SENIOR ADMINISTRATION OFFICIAL: -- and we can have OMB get back to you on that.

>>

>> Q Do you know the answer?

>>

>> SENIOR ADMINISTRATION OFFICIAL: I don't. No, I honestly don't. I'm not the budget guy, so I don't know.

>>

>> Q This is a topic that the President really hasn't discussed all that much. I know I've heard him talk a little bit about wanting to boost the car industry and about how he's not sure about self-driving cars, but can you give us just kind of a little bit insight into the President's thinking about the role he feels that the government should have when you have a situation where gas prices are lower than they used to be? Does he believe that the government should be working to try to encourage consumers to buy more fuel-efficient cars?

>> SENIOR ADMINISTRATION OFFICIAL: I think he believes that the government shouldn't be an obstacle to the auto industry being able to compete globally and to innovate and create the technologies that will create jobs and expand and grow the economy. I think that's his view, plain and simple. I don't think it's anything else.

>>

>> Q And the Administrator had some comments the other day about regulating carbon dioxide and the Supreme Court decision that you mentioned. Is there any change from this administration compared to the last one that? Do you believe that that decision was decided correctly? Or are you going to continue to have the EPA regulate carbon dioxide as a pollutant?

>>

>> SENIOR ADMINISTRATION OFFICIAL: Yeah, at this point there's no change in policy that I'm aware of.

>>

>> Q Can we just get an idea of what tomorrow looks like? President Trump is going to announce this himself at the event at a roundtable or what? Like what's it --

>>

>> SENIOR ADMINISTRATION OFFICIAL: So, tomorrow, for planning purposes only, the format will be that President Trump will arrive in Michigan. He's going to do a brief tour. He'll then have a listening session and meeting with auto CEOs. And then he will address auto manufacturers, like workers, and supply workers in a larger group setting. That's where he will be discussing this topic. So it will towards the end of his visit in Michigan, when he -- the open portion of it.

>>

>> Q So he won't mention it during a spray of the --

>>

>> SENIOR ADMINISTRATION OFFICIAL: I haven't seen what his talking points are, but the first two events are pool spray, and then the third one in Michigan is an open press event, and that's where he'll talk and address the audience.

>>

>> Q He's not signing anything?

>>

>> SENIOR ADMINISTRATION OFFICIAL: Correct.

>>

>> Q I just want to clarify the answer to Andrew's question on -- there was no analysis of how this change that you're proposing, what would happen tomorrow, would affect exports by American automakers?

>>

>> SENIOR ADMINISTRATION OFFICIAL: It's not a change. Again, it's not a change. It's getting the midterm review back on track.

>>

>> Q The action tomorrow --

>>

>> SENIOR ADMINISTRATION OFFICIAL: It's just a midterm review.

>>

>> Q -- there was no announcements about whether this would affect American automakers exporting into markets that have high emission standards.

>>

>> SENIOR ADMINISTRATION OFFICIAL: It's just about getting the midterm review back on track. It's very simple. There's no analysis associated with it. It's looking at the deal, what was the deal, get it back on track, and that's it.

>>

>> Q But then what happens if the automakers say, actually, this makes it harder for us because we've got to develop two different --

>>

>> SENIOR ADMINISTRATION OFFICIAL: That's further down the road. That's not what they're saying now. I mean, I'm not hearing that at all, so I don't know -- I don't even know what you're referring to.

>>

>> Q Well, meaning if you have to make a more efficient car for a market that you're already selling into, but you could make a less efficient car here.

>>

>> SENIOR ADMINISTRATION OFFICIAL: That has nothing to do with getting this midterm review back on track.

>>

>> SENIOR ADMINISTRATION OFFICIAL: For those on the phone, I understand it was not easy to hear earlier that the embargo was until 5:00 a.m. tomorrow morning, and attribution is to a senior White House official. If you have any follow-up questions, please let the press team know. Thank you.

>>

>> END 6:21 P.M. EDT

>>

>>
>>
>>
>>

To: Flynn, Mike[Flynn.Mike@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
From: Schnare, David
Sent: Wed 3/15/2017 6:13:40 PM
Subject: Hot Topics issue
[PPG.docx](#)

Please see attached.

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: john.k.mashburn [REDACTED] **EOP/Ex. 6** Catanzaro, Michael J.
EOP/WHO [REDACTED] **EOP/Ex. 6** Bremberg, Andrew P.
EOP/WHO [REDACTED]
From: Schnare, David
Sent: Wed 3/15/2017 3:06:15 PM
Subject: [REDACTED] Deliberative Process Privilege/Ex. 5

Andrew, Mike and John:

Deliberative Process Privilege/Ex. 5

David W. Schnare

Assistant Deputy Administrator

US. EPA

To: Schnare, David[schnare.david@epa.gov]
Bcc: LSritts@rittslawgroup.com[LSritts@rittslawgroup.com]
From: Sugiyama, George
Sent: Fri 3/3/2017 7:27:30 PM
Subject: meeting on March 23 around noon.

I have been asked to inquire about your availability on March 23 to speak to a group call NEDA (National Environmental Development Association) . It is an over 30 year old group of companies which pursue an eclectic variety of environmental issues, mostly air issues. As a heads up the general counsel is my wife Leslie Sue Ritts. But I am doing this on behalf of their President Al Collins, VP Occidental Petroleum. Invited attendees which have accepted include , Proctor and Gamble, Eli Lilly, BP America, Merck & c0mpany, Koch Public Sectors, Boeing, Phillips 66, Georgia Pacific, and on the phone Boeing folks from Washington DC. Based on past meetings it is expected that 5-6 more will attend.

The meeting is on March 23 at Occidental offices at 1701 Pennsylvania. Ave. and the time slot is between 10-1, to give you some latitude. The talk is expected to be 45 min to 1 hour.

Topics would be Clean Air Act transition issues: ozone NAAQS implementation and background/international ozone transport, refrigerants as part of the Obama Climate Action Plan, permitting reform and streamlining (the entire gamut of Bush era rulemakings like help with debottlenecking, fugitives, project netting), the “once in” policy and the regional consistency rule that EPA reversed after the D.C. Circuit told them to enforce it.

A positive response would be most appreciated. Thank you

George